UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

GUILHERME CAVALCANTE MOL	**CIVIL ACTION NO. 1:25-CV-02023**
VERSUS	**DISTRICT JUDGE DOUGHTY**
ELEZAR GARCIA, ET AL	**MAGISTRATE JUDGE PEREZ-MONTEZ**

FEDERAL RESPONDENT'S RESPONSE[1] TO
PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents, Brian Acuna the Director, New Orleans ICE Field Office and his successor in interest, Todd Lyons, the Acting Director of ICE, and Kristi Noem the United States Secretary of Homeland Security file this response to the Petition for Writ of Habeas Corpus.

[1] While the U.S. Attorney's Office only has authority to respond on behalf of Federal Respondents, all arguments made herein apply with equal force to the Warden of the South Louisiana ICE Processing Center.

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INTRODUCTION

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is required under controlling precedent. The Fifth Circuit Court of Appeals recently held that aliens, like Petitioner, who entered the United States legally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026).

STATEMENT OF FACTS

Petitioner is a native and citizen of Brazil, who entered the United States legally in Houston, Texas at George Bush International Airport, (IAH airport) as a B2 nonimmigrant visitor for pleasure on March 8, 2018. He was authorized to remain in the United States for a temporary period not to exceed September 7, 2018. When the petitioner remained in the United States beyond the six (6) month period; he became a visa overstay. *See* Ex A Declaration¶ 4, *see also* See Ex B Form I-862, Notice to Appear, (NTA). On August 30, 2025, Enforcement Removal Operations, (ERO), Criminal Alien Program, (CAP), encountered the Petitioner while he was incarcerated at the Pittsburg County Jail in McAlester, OK. Petitioner was arrested on August 28, 2025, by the Kiowa Police Department for Speeding and Driving with a Revoked or Suspended License, which is a misdemeanor; the charge is currently pending. See Ex A¶ 5.

Petitioners has multiple criminal offenses including;

a. An arrest on December 5, 2019, for domestic violence. He was charged with assault and battery on a family or household member. This charge was dismissed for lack of prosecution on July 25, 2022. He was arrested by the Milford Police Department, Marlborough Massachusetts;
b. An arrest on January 7, 2022, for disorderly conduct and disturbing the peace. He was arrested by the Hudson Police Department. His charges were dismissed by the Commonwealth.

c. An arrest on August 28, 2025, for speeding and possessing a canceled suspended or revoked driving license. He was arrested by the Kiowa County Oklahoma Police Department. Additionally, Petitioner also has a warrant for his arrest for failure to appear out of Ohio. See Ex A¶ 6 Ex *see also* Ex D, I-213.

On September 2, 2025, Petitioner's charging documents (Notice to Appear-NTA) were accepted by the Executive Office of Immigration Review (EOIR). *See* Ex A¶ 7. On October 2, 2025, Petitioner was transferred from Cimarron Correctional Facility to the Bluebonnet Detention Facility. *See* Ex A¶ 8. On October 9, 2025, Petitioner was transferred from the Bluebonnet Detention Facility to Winn Correctional Center. *See* Ex A¶ 9. On August 30, 2025, enforcement and removal operations made a custody determination to hold the petitioner without a bond. *See* Ex C. On October 23, 2025, the immigration judge issued a decision denying the Petitioner's request for bond notating that not only was their lack of jurisdiction, but additionally the petitioner was also a danger to the community.[2]. *See* Ex A¶ 10, *see also* Ex E and Ex F. Petitioner married his US citizen wife while in proceedings on November 20, 2025. *See* Ex A¶ 11. Petitioner was served with a Notice to Appear notifying him that he was being placed in removal proceedings under section 237of the Immigration and Nationality Act ("INA") on August 30, 2025[3]. See Ex A¶ 12. The specific charge was under § 237(a)(1)(B) of the INA, as amended. In that after admission as a nonimmigrant under § 101(a)(15) of the INA, the petitioner

[2] Presumably because of his domestic violence charge of assault and battery on a family member from December 5, 2019, and as well as all of his other charges. Even though some of the Petitioner's charges had been dismissed and some of his cases were still pending, [i]n bond proceedings, it is proper for the Immigration Judge to consider not only the nature of a criminal offense but also the specific circumstances surrounding the alien's conduct. See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Put simply, the immigration judge can rule on an alien's conduct in a bond hearing regardless of the disposition of the charges.

[3] Section 237 of the INA refers to 8 U.S.C. § 1229a governing removal proceedings before an immigration court.

remained in the United States for a time longer than permitted in violation of the INA or any other law of the United States.

On November 21, 2025, Petitioner had a master calendar hearing and a second bond hearing where a new immigration judge ruled that he did not have jurisdiction to grant the petitioner a bond. *See* Ex A¶ 13, *see also* Ex G and Ex H. Petitioner received his I-130 application from the United States Citizen and Immigration Service, (USCIS) on December 3, 2025. *See* Ex A¶ 14. On December 5, 2025, Petitioner had an upcoming individual hearing on December 19, 2025, before the immigration court. *See* Ex A¶ 15. On December 19, 2025, an immigration judge ordered that Petitioner's third bond request was denied because there was no material change in circumstances. See Ex A¶ 16 and see *also* Ex I and Ex J. also at Petitioner's removal proceedings the immigration judge found him removable were his petition for adjustment of status was denied and the Petitioner was ordered removed to Brazil. *See* Ex K. The judge advised the Petitioner of the penalties for failure to depart pursuant to the removal order. *See* Ex A¶ 16 and *see also* Ex K. On December 22, 2025, the Petitioner reserved appeal. *See* Ex A¶ 17. On February 4, 2026, the Petitioner filed an appeal with the Board of Immigration Appeals, (BIA). *See* Ex A¶ 18. On February 9, 2026, T8 was allocated for petitioner's removal, (T-8 is the system ERO uses to schedule and allocate seats for individuals on transfers and removal flights.). *See* Ex A¶ 19. On February 10, 2026, Attorney Luana Biagini successfully filed an electronic G-28 (representation form) through ERO eFile on 2026-02-10 13:21:29 on behalf of Petitioner. *See* Ex A¶ 20.

On February 10, 2026, the district court granted a stay of deportation for Petitioner. ERO acknowledged that the Petitioner cannot be removed. *See* Ex A¶ 21. On February 12, 2026, legal representative, Attorney Luana Biagini, was notified on 2026-02-12 via ERO eFile that the Petitioner was transferred back to Winn Correctional Center (WCC) from the Alexandria Staging Facility. (AEX).

See Ex A¶ 22. Petitioner's appeal is still pending before the Board of Immigration Appeals, (BIA), therefore he does not have a final appeal. Accordingly, any requests for post order custody reviews would be premature at this time. *See* Ex A¶ 23. Currently, the immigration court has ordered that the Petitioner's transcripts from his immigration hearing be provided to the BIA. *See* Ex H.

The Petitioner filed the instant habeas petition pursuant to 28 U.S.C. § 2241 on December 12, 2025, to seek enforcement of his rights on what petitioner alleges is a violation of his rights under the fourth and 14th Amendments to the United States Constitution and violation of federal statutes including the Immigration and Nationality Act (INA). See ECF 1, lines 2 through 10, page 2. Petitioner alleges that § 236(a) governs the detention of all noncitizens whom the petitioner alleges are not subject to mandatory detention. The petitioner cites 8 U.S.C. § 1226(a)(1)(2) which creates to discretionary detention were a noncitizen is eligible for release on bond unless the government establishes that detention is justified. The petitioner also argues that INA § 237(a)(1)(B) does not trigger mandatory detention as described in § 236(c). See ECF 1, lines 5 through 24, page 5. The petitioner concludes that this means that he has a right to a custody redetermination hearing, before a neutral immigration judge, in which DHS bears the burden of establishing danger or risk of flight and the immigration judge has jurisdiction to set the bond. Petitioner also alleges that nothing in the INA or its implementing regulations divest the immigration judge of jurisdiction over the bond hearings for individuals detained under § 236(a). Petitioner further claims that under § 236(a) he is statutorily entitled to bond considerations regardless of the fact that the INA places such individuals like him under 236(c). He further argues that it is not a statute that limits his right to seek a custody redetermination before an immigration judge. Petitioner also alleges that the Fifth Amendment requires that civil immigration detainees receiving meaningful individualized hearing to determine whether their detention is justified. Petitioner further argues that civil immigration detention has to be reasonably related to its purpose of ensuring an appearance at proceedings and protecting the

community. Petitioner believes that his continued detention serves no legitimate governmental objective. The petitioner claims that the immigration judges' refusal to exercise bond jurisdiction constitute a final agency action that is arbitrary, capricious and contrary to the law. Lastly the petitioner argues that he has a pending I-130 (petition for alien relative) before USCIS and a concurrently filed I-485 (application to register permanent residence or adjust status) which USCIS retains jurisdiction over. Petitioner's argument is that by denying his request for continuance, the Executive Office of Immigration Review EOIR through the immigration judge, effectively prevented the petitioner from pursuing his sole statutory pathway to a lawful permanent residence available to him. The petitioner is mistaken and his claim should be denied.

ARGUMENT

I. Petitioner is Subject to Mandatory Detention Pursuant to the Fifth Circuit's Decision in *Buenrostro-Mendez v. Bondi.*

Petitioner is detained under INA § 235, because as a visa overstay charged under INA § 237(a)(1)(B), he is statutorily entitled to a bond. *See* ECF 1 Claim One, page 8 of 13. It is immaterial that the petitioner claims that he is under the detention authority of § 236. Although, the warrant for notice of custody determination both references § 236. It does not change the fact that the petitioner is detained under § 235. Petitioner's argument that being present in the United States limits the scope of § 1225(b)(2)(A) is unpersuasive. 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-Losa*, 25 I&N Dec. 734, 743 (BIA 2012). Petitioner "provides 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 admission,' and has somehow converted to a

status that renders him or her eligible for a bond hearing under section 236(a) of the INA [8 U.S.C. § 1226(a)]." Matter of Yajure Hurtado, 29 I&N Dec. at 221 (citing Matter of Lemus-Losa, 25 I&N Dec. at 743 & n.6). 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 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; Lemus-Losa, 25 I&N Dec. at 743. As stated before, when the petitioner remained in the United States beyond the six (6) month period; he became a visa overstay. See Ex A Declaration¶ 4, see also See Ex B Form I-862, Notice to Appear, (NTA). Once the petitioner stayed past the date on his form I-94 he was in the United States illegally. The petitioner had every opportunity to apply for an extension of his visa with USCIS, but he failed to do so. In fact, the records do not indicate that he ever applied for an extension on his B2 visa. His failure to maintain status made him inadmissible and ultimately, he reverted back to being an applicant for admission even though he was lawfully admitted to the United States initially.

8 U.S.C. § 1226 applies to "aliens", which means any person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). "Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more... classes of deportable aliens.' §1227(a)." Jennings, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in and admitted to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." Id. Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General

and the DHS have broad discretionary authority to detain an alien during removal proceedings. See 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings). Petitioner's habeas petition must be denied because, based on recent Fifth Circuit precedent, he falls under the plain language of the mandatory detention provision in 8 U.S.C. § 1225(b)(2). In *Buenrostro*, the Fifth Circuit Court of Appeals held that aliens like Petitioner fall squarely within the ambit of § 1225(b)(2). *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026)..[4] The *Buenrostro-Mendez* decision involved two consolidated cases. Both aliens in *Buenrostro* entered the United States illegally. 2026 WL 323330 at *3. The aliens evaded immigration enforcement officials for many years (decades in the case of one of the aliens). *Id.* When ICE encountered the aliens in 2025, they were served NTAs, charging them with violating 8 U.S.C. § 1182(a)(6)(A)(i). Id. The aliens were then detained under 8 U.S.C. § 1225(b)(2). Id. The Fifth Circuit held that the Government correctly applied the mandatory detention provision of 8 U.S.C. § 1225(b)(2) to the aliens because they were "applicants for admission"; who were "seeking admission;" and, who were "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2). *Id.* In

[4] The Fifth Circuit decision aligns with prior decisions of this Court and others within the Western District. See *Dogus Topal v. Bondi*, et al, No. No. 1:25-1612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (denying TRO for inadmissible alien present in the country without admission or parole since 2022 because alien was an "applicant for admission" under 8 U.S.C. § 1225(a) and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *Andrade v. Patterson*, et al, 6:25-1695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (denying habeas relief and TRO for inadmissible alien present in the country without admission or parole for 4 years because the alien is an "applicant for admission subject to mandatory detention under § 1225(b)(2)); *Oliveria v. Patterson*, et al, No. 6:25-1463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval v. Acuna*, et al No. 6:25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Kum v. Ross*, et al, No. 6:25-cv-451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (adopting report and recommendation, 2025 WL 3113646, Oct. 22, 2025) (applying the definition of "applicant for admission" to a petitioner who was present in the United States without having been admitted or paroled under § 1225(a)(1) and finding mandatory detention was lawful under § 1225(b)(2)).

so holding, the Fifth Circuit rejected the arguments upon which many district courts relied upon in granting habeas relief.

First, the Fifth Circuit made clear that aliens who had been present illegally in the United States for many years remained "applicants for admission" who were "seeking admission." 2026 WL 323330 at *4. The court explained that "[w]hen a person applies for something, they are necessarily seeking it." Id. In so holding, the court rejected the reasoning that the phrase "seeking admission" in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals "currently and actively seeking to be admitted to the United States when [they are] apprehended." *Id.* at *3. The Fifth Circuit held that "the everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.* at *4.

Second, the Fifth Circuit rejected the argument that § 1225(b)(2)'s mandatory detention provision rendered portions of § 1226 superfluous. Section 1226 still applies to aliens who have previously been admitted, such as visa holders whose visas have expired or those aliens who were erroneously admitted. 2026 WL 323330 at * 7. Similarly, the Laken Riley Act provisions of § 1226(c) still have effect and had effect even more so when it was passed: as the Executive at the time was declining to exercise its full enforcement authority under the INA. *Id.* Moreover, the *Buenrostro-Mendez* court recognized that any redundancy in the statue "does not give this court a 'license to rewrite ... another portion of the statute contrary to its text.'" *Id.* at *5 (quoting Barton v. Barr, 590 U.S. 222, 239 (2020)).

Finally, the *Buenrostro-Mendez* court, recognizing that the plain language of the INA controlled the analysis and outcome, rejected arguments based on the Executive's past interpretation and application of § 1225 and § 1226. 2026 WL 323330 at * 8. The court observed that the Government's interpretation and application of § 1225(b)(2) "better honors" the intent of Congress's amendments

to the INA—the full enforcement of § 1225(b)(2)'s plain terms "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at 9.

Here, in all material respects, Petitioner's case cannot be distinguished from *Buenrostro-Mendez*. When the petitioner remained in the United States beyond the six (6) month period authorized; he became a visa overstay, as spelled out on his Form I-94, Arrival/Departure Record and therefore, he started accruing unlawful presence in the United States on September 8, 2018. *See* INA 212(a)(9)(B)(ii). The records do not indicate that he applied for an extension or renewal of his visa. As a result of the petitioner's staying in the United States past September 7, 2018, his B2 visa was automatically canceled. The time that the Petitioner spent in the United States without a visa is considered unlawful presence and once there was a total of 180 days or more of unlawful presence in the United States petitioner would be considered inadmissible to the United States. This could result in the petitioner not being granted an additional visa, or green card (which would be lawful permanent residence), or other immigration benefit for a period of either 3 or 10 years depending on how long the petitioner overstayed his visa. When an alien's unlawful presence, overstay, amounts to 180 to 365 days, the immigration consequences are a three-year bar on reentry. And overstay of unlawful presence that is over 365 days, like the Petitioner in this case results in a 10-year bar on reentry. It should be noted that these immigration consequences will not truly come to bear on the petitioner until he leaves the United States.

As stated before, as a visa overstay and by accruing unlawful presence the Petitioner became inadmissible to the United States on September 8, 2018. Petitioner failed to maintain his immigration status, which resulted in him becoming an applicant for admission making him subject to the provisions of 8 U.S.C. § 1225 as he was an alien present in the United States without legal status. As the Fifth Circuit held in *Buenrostro-Mendez*, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission" who is "seeking admission." 8 U.S.C. §

1225(a)(1); § 1225(b)(2). Petitioner was illegally present in the United States: he was not entitled to be admitted into the country. Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien shall be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted") (emphasis added). The *Buenrostro-Mendez* decision is binding precedent and requires that the Court deny this habeas petition..[5]

Finally, to the extent the Court reaches the issue, the class action declaratory judgement in *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), does not change the analysis. As explained above, the *Buenrostro-Mendez* court has announced the law as it relates to the proper application of 8 U.S.C. § 1225(b)(2) in this circuit. The holding in *Bautista*, which adopted the arguments rejected in *Buenrostro-Mendez*, is thus at odds with controlling precedent. The Fifth Circuit's decision in *Buenrostro-Mendez* now controls the Court's analysis of § 1225(b)(2)'s mandatory detention provision and the ruling in *Bautista* has no weight. Indeed, even the law of the case doctrine (assuming arguendo it ever applied or had relevance here) must give way to intervening changes in the law. *See Morrow v. Dillard*, 580 F.2d 1284, 1290 (5th Cir. 1978).

II. Petitioner's mandatory detention does not violate due process under the Fifth Amendment..[6]

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. See (a)(1). And Congress

[5] The *Buenrostro-Mendez* decision is a published decision and precedential authority even though the mandate has yet to issue. See, e.g., *Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent.").

[6] Petitioner also references the Fourteenth Amendment; however, the Fourteenth Amendment is not applicable to the Federal Government.

directed that aliens like Petitioner shall be detained during their removal proceedings. (b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. See *Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); Demore v. Kim, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts,

such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of *Jennings*, stating "In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings." *Jennings*, at 296-97. The Supreme Court in Jennings explained in detail why the *Zadvydas* opinion does not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. Id. at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). See id. The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. Id. at 512. Considering Congress's interest in dealing with illegal immigration by keeping aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns. See id. generally.

Likewise, Petitioner's temporary detention pending his removal proceedings does not violate due process. He has only been detained for roughly seven months as his process unfolds. Specifically, he is currently in active removal proceedings before the BIA. Resolution one way or another is expeditiously forthcoming. Petitioner's ample available process in his current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty "sufficiently

outrageous" required to establish a substantive due process claim. See generally *Reed v. Goertz*, 598 U.S. 230, 236 (2023).

Here, Petitioner is detained for the limited purpose of removal proceedings. Petitioner's detention is not punitive or for other reasons than to address his removability from the United States. His detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of her removal proceedings, which are moving expeditiously. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court, while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302. Moreover, as the court noted in its report and recommendation in *Kum*, even lengthy detention is mandatory and lawful under § 1225(b). Kum, No. 25-cv-00451 [ECF 14 at *4, n. 2] (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

In his habeas corpus challenge in *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. Nor did he argue that he was not "deportable" within the meaning of § 1226(c). Rather, the alien in that case argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. Similar to the alien in *Demore*, Petitioner is alleging that she should not be detained during the pendency of her removal proceedings. However, Congress made the decision to detain her during the removal proceedings which is a "constitutionally permissible part of that process." See *Demore*, 538 U.S. at 531.

A. Petitioner has had multiple bond hearings

In Claim Two, page 9 of 13. of his habeas corpus petition, the petitioner alleges that he is in need of a meaningful individualized hearing to determine whether detention is justified. Petitioner alleges that he has been detained since August 30, 2025, and he has not received a lawful bond hearing

when in fact, Petitioner has had three bond hearings on October 23, 2025, November 21, 2025 and in his individual hearing on December 19, 2025. The petitioner's first bond redetermination hearing was conducted by immigration judge Christopher Phan who advised Petitioner that he didn't have jurisdiction to hear the case and that the petitioner was a danger to the community. See Ex A¶ 10, see also Ex C. In other districts where this ruling may have been considered sufficient, the court would merely adopt the alternative finding that the petitioner was a danger to the community and bond would be denied anyway. Petitioner's second bond hearing in November was conducted by immigration judge Justin Dinsdale, who ruled that he did not have jurisdiction to grant a bond. See Ex A¶ 13, see also Ex D. To qualify for a second bond hearing in immigration court, Petitioner had the burden of showing that there was a material change in circumstances since his last bond redetermination. Under the INA that is the only way to request a subsequent bond redetermination hearing. According to the Immigration Court Practice Manual, Chapter 9 Detention and Bond, 9.3-Bond Proceedings subsection (c)(4) Multiple requests- if an Immigration Judge or the Board of Immigration Appeals has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(1). 8 C.F.R. § 1003.19(e). (Subsection (c)(1) requires there been a request for bond be made in writing, with the alien's full name an alien registration number, the bond amount set by the Department of Homeland Security, and if the alien is detained the location of the detention facility.) At his individual hearing on November 19, 2025, the Petitioner moved for a third bond hearing, and the immigration judge ruled that he had not shown material change in circumstance and thus the bond was denied. See Ex A¶ 16 and see also Ex G. Petitioner's conclusory statement that this court should vacate his custody redetermination and order lawful bond proceedings does not mean that his three bond proceedings were unlawful.

B. A lawful finding of danger has been made in this Petitioner's first bond hearing and petitioner is a flight risk.

In Claim Three, page 10 of 13, Petitioner alleges that civil detention is only constitutionally permissible when reasonably related to its purposes ensuring appearance at proceedings and protecting the community. He alleges that because no lawful finding of danger or flight risk has ever been made, petitioner's continued confinement serves no legitimate governmental objective. As stated before on October 23, 2025, the immigration judge determined that he was a danger to the community. See Ex A¶ 10, see also Ex C.

C. Petitioner's I-130 and I-485 applications were addressed by the immigration judge at petitioner's individual hearing.

Petitioner alleges in Claim Three, page 10 of 13. of his habeas corpus petition that because he has a US citizen spouse, and a stable residence in the pending I-130 and I-485 applications before USCIS, that the absence of a lawful custody determination has become punitive, arbitrary and excessive and the lack of bond violated substantive due process. Petitioner is incorrect.

Petitioner's claims were addressed by the immigration judge at the individual hearing. The immigration judge definitively told the petitioner that he could not rule on petitioner's adjustment of status application because there was no visa readily available. The judge advised petitioner that he was inclined to grant the relief of voluntary departure. DHS did not object to pre-or -post conclusion voluntary departure which is technically relief. The petitioner rejected this offer as explained below.

Petitioner married his US citizen spouse while in proceedings on November 20, 2025, *See* Ex A¶ 11. The fact that the petitioner waited to get married while he was detained may be an indicator that his marriage may not be bona fide. A marriage that was entered into for the purpose of evading immigration laws is not a bona fide marriage. For more information on how USCIS determines whether there is a bona fide marriage, see Part I, Family-Based Conditional Permanent Residents, Chapter 3, Petition to Remove Conditions on Residence, Section A, Establishing a Bona Fide Marriage

[6 USCIS-PM I.3(A)]. See *Matter of M–*, 8 I&N Dec. 217 (BIA 1958). Additionally, there is nothing in INA 204(a)(1) specifying that an immediate relative of a U.S. citizen who is the beneficiary of an I-130 petition must be present in the U.S. The regulation contemplates beneficiaries being stateside and abroad since it says that if USCIS approves the petition and the beneficiary spouse is outside the United States, the agency forwards the case to the State Department's National Visa Center (NVC) for processing. 8 C.F.R. sec. 204.2(a)(3). The problem for Petitioner is that his overstay was for more than a year which results in a 10 year bar on reentry. This is why, at the immigration hearing, the petitioner refused both forms of voluntary departure. Voluntary departure would have no impediments on the petitioner coming back into the country. Petitioner's litigation strategy contemplated that he needed to be granted a bond to marshal his case in front of USCIS.

D. There was no unlawful interference with petitioner's statutory right to pursue adjustment of status.

Petitioner's Claim Five, page 11 of 13. Alleges interference with statutory rights to pursue adjustment of status. It was clear at the individual hearing that the immigration judge determined that there was no visa available currently for the petitioner to adjust status. The immigration judge also pointed out to petitioner the statutory bars that would be in place with the removal order which amounted to a 10-year bar of returning to the United States. Ironically, this is the same amount of time that the petitioner would be barred pursuant to his overstay lasting more than 365 days. The petitioner was not prevented by the immigration judge from pursuing his pathway to lawful permanent residence.

E. **Petitioner Fails to Assert Valid APA claim because there is no final agency action.**

Petitioner argues his detention violates the APA doctrine, alleging that the application of Section 1225 § (B)(2) has barred him from receiving a bond hearing before an Immigration Judge is therefore arbitrary, capricious, and not in accordance with the law, such that it violates the APA. The Petitioner cited 5 U.S.C. § 706(2). Petitioner Claim Four, page 10 0f 13. This argument is without

merit. First, Petitioner had three separate bond hearings. It can hardly be said that Petitioner was denied a bond hearing when he participated in multiple bond hearings. Next, a final agency action is required for APA review. 5 U.S.C. § 706. An action is "final" when it (1) "mark[s] the consummation of the agency's decision-making process," and (2) is one "from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted). "Final agency action 'is a term of art that does not include all [agency] conduct such as, for example, constructing a building, operating a program, or performing a contract,' but instead refers to an 'agency's [final] determination of rights and obligations whether by rule, order, license, sanction, relief, or similar action.'" *Nat'l Veterans Legal Servs. Program v. United States DOD*, 990 F.3d 834, 839 (4th Cir. 2021) quoting *Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013) (citing *Bennett*, 520 U.S. at 177-78). A challenged action fails the first prong if it is "of a merely tentative or interlocutory nature" and does not express an agency's "unequivocal position." *Holistic Candlers and Consumer's Ass'n v. FDA*, 664 F.3d 940, 943 (D.C. Cir. 2012) (citations omitted). A non-final action contemplates further administrative consideration or modification prior to the agency's adjudication of rights or imposition of obligations. See id. at 945.

III. Petitioner is not entitled to Attorney's Fees and Costs under EAJA.

Petitioner asks this Court to award him costs and attorney's fees in this action, under the Equal Access to Justice Act, 28 U.S.C. § 2412; however, Petitioner is not entitled to such an award. "EAJA is a limited waiver of sovereign immunity, allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th 782, 784 (5th Cir. 2023). (citing Ardestani v. I.N.S., 502 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are "hybrid" cases, the

Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. Id. Therefore, regardless of the resolution of Petitioner's substantive claims, the Court should reject his request for EAJA fees.

CONCLUSION

For the reasons explained above, Petitioner's petition for writ of habeas corpus and complaint for declaratory and injunctive relief should be denied and Petitioner's detention should remain undisturbed for the duration of her removal proceedings. As an inadmissible alien seeking admission, he is subject to mandatory detention for the duration of his removal proceedings pursuant to § 1225 (b)(2) and is therefore not entitled to release or to a bond hearing under § 1226.

Respectfully submitted,

ZACHARY A. KELLER
UNITED STATES ATTORNEY

By: *s/ Numa V. Metoyer, III*
Numa V. Metoyer, III (#28961)
Special Assistant United States Attorney
300 Fannin Street, Suite 3201
Shreveport, Louisiana 71101-3068
(318) 676-3600 // Fax: (318) 676-3642
Email: Numa.Metoyer@ice.dhs.gov