**UNITED STATES DISTRICT COURT**
**DISTRICT OF VERMONT**

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| VINCENTE SAUL LOPEZ-NIZ,<br><br>*Petitioner*,<br><br>*v.*<br><br>GREG HALE, Superintendent of Northwest State Correctional Facility, PATRICIA HYDE, Field Office Director, U.S. Immigration and Customs Enforcement, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, U.S. Secretary of Homeland Security, PAMELA J. BONDI, Attorney General of the United States, and DONALD J. TRUMP, President of the United States,<br><br>*Respondents*. | ) | Case No. 2:25-cv-912 |

**FEDERAL RESPONDENTS' OPPOSITION TO**
**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

Patricia Hyde, in her official capacity as Acting Field Office Director of the Boston Field Office of United States Immigration and Customs Enforcement ("ICE"); Todd Lyons, in his official capacity as Acting Director of ICE; Kristi Noem, in her official capacity as Secretary of the United States Department of Homeland Security ("DHS"); Pamela Bondi in her official capacity as United States Attorney General; and Donald. J. Trump, in his official capacity as President of the United States (collectively, "Federal Respondents"), by and through their attorney, Michael P. Drescher, First Assistant United States Attorney for the District of Vermont, respectfully submit this opposition to Vincente Saul Lope-Niz's Emergency Petition for Writ of Habeas Corpus, dated December 12, 2025 (ECF Doc. No. 1) (the "Petition").

## PRELIMINARY STATEMENT

Petitioner is a native and citizen of Guatemala who entered the United States unlawfully, without being inspected or admitted by an immigration officer, in 2022. On December 11, 2025, ICE took Petitioner into custody in Massachusetts following his arrest by local law enforcement on a state-law charge. ICE placed Petitioner into removal proceedings, and he currently remains detained by ICE (now in Vermont) pursuant to 8 U.S.C. § 1225(b)(2), under which noncitizens who are present in the United States but have not been lawfully admitted to the country are deemed "applicants for admission" who generally must be detained throughout their removal proceedings.

Petitioner now seeks a writ of habeas corpus, contending principally that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because, as someone who has been physically present in the United States for several years, he is not presently seeking admission to this country. According to Petitioner, his civil detention is therefore authorized, if at all, by 8 U.S.C. § 1226(a), under which detainees may request a bond hearing before an Immigration Judge.

As discussed herein, Petitioner's arguments are belied by the plain language set forth in the Immigration and Nationality Act ("INA"), as amended. Although Petitioner has allegedly been residing in Massachusetts for several years, he has not been lawfully *admitted* to the United States, and he thus remains an "applicant for admission" as defined by 8 U.S.C. § 1225(a)(1). As such, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) pending the resolution of his removal proceedings. For these reasons and others discussed herein, his Petition lacks merit and should be denied. And, in any event, Petitioner's request for immediate release is improper; if this Court should disagree with Federal Respondents and conclude that Petitioner is subject to detention under 8 U.S.C. § 1226(a) and, hence, entitled to a bond hearing before an Immigration Judge, the proper habeas remedy would be to order that he be provided such a hearing.

## RELEVANT BACKGROUND

### A. Factual History

Petitioner is a native and citizen of Guatemala who last entered the United States unlawfully, without being inspected or admitted by an immigration officer, on May 27, 2022, in Texas, at 15 years of age. *See* Pet. at ¶¶ 1-2. He soon thereafter encountered immigration officers, who, upon determining that Petitioner was an unaccompanied alien child who had entered the United States illegally, arrested Petitioner and transferred him into the custody of the United States Department of Health and Human Service's Office of Refugee Resettlement ("ORR") for placement pending the resolution of removal proceedings, as required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, 122 Stat. 5044 (2008), 8 U.S.C. § 1232(b)-(c). *See id.* at ¶¶ 2-3. On or about June 18, 2022, ORR released Petitioner into the custody of his sister, who resided in Massachusetts. *See id.* at ¶¶ 1-2.

On October 19, 2023, Petitioner filed with United States Citizenship and Immigration Services ("USCIS") a Form I-360 petition for "Special Immigrant Juvenile" status, which allows certain alien children to apply for an adjustment of status to that of lawful permanent resident once a special-immigrant visa is available. ECF Doc. No. 1-1. On February 1, 2024, USCIS notified Petitioner that it had approved his petition and had exercised its discretion to grant him temporary "deferred action," which is "an act of administrative convenience to the government which gives some cases lower priority for removal from the United States for a specified period of time." *Id.*

On December 11, 2025, ICE took Petitioner into custody in Massachusetts following his arrest by local law enforcement officers on a state-law charge related to the unlawful operation of a motor vehicle. *See* Pet. at ¶ 5. That same day, ICE served Petitioner with a Form I-862 Notice to Appear in immigration court to show why he should not be removed from the United States pursuant to § 212(a)(6)(A)(i) of the INA, as amended, as an alien present in the United States

without having been admitted or paroled, or pursuant to § 212(a)(7)(A)(i)(I) of the INA, as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired travel document. *See* Form I-862 Notice to Appear (Exhibit A hereto).[1]

ICE thereafter transferred Petitioner from Massachusetts to Vermont, where he currently remains detained at the Northwest State Correctional Facility pursuant to 8 U.S.C. § 1225(b)(2) pending the resolution of his removal proceedings. *See id.* at ¶ 6.

On or about December 15, 2025, USCIS notified Petitioner that it had exercised its discretion to terminate his deferred action. *See* Termination Notice (Exhibit B hereto).

## B. Relevant Legal Framework

### *1. Historical Overview of the Immigrations Laws and the Elimination of Preferential Treatment for Persons Who Enter the United States Illegally*

Our immigration laws have long authorized immigration officials to charge noncitizens as removable from the country, to arrest noncitizens subject to removal, and to detain noncitizens during their removal proceedings. *See, e.g.*, *Abel v. United States*, 362 U.S. 217, 232-37 (1960). With specific regard to detention, Congress enacted the INA, as amended, to serve as a multi-layered statutory framework governing, among other things, the detention of noncitizens pending a decision on their removal. *See generally* 8 U.S.C. §§ 1225, 1226. As pertinent here, the INA was amended significantly in 1996 to address, among other things, lawmakers' concerns that noncitizens who entered the United States unlawfully were, until that time, afforded greater legal rights and protections than those who properly presented at a port of entry or otherwise lawfully sought admission to the country, resulting in a perverse incentive for noncitizens to attempt to enter the country unlawfully.

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[1] Petitioner claims that he is being subjected to *expedited* removal under 8 U.S.C. § 1225(b)(1). Pet. at ¶¶ 8-11, 41-43. He is mistaken; the Form I-862 Notice to Appear that he received reflects that he was placed into full/non-expedited removal proceedings before an Immigration Judge "under Section 240 of the [INA]," 8 U.S.C. § 1229a. Ex. A.

Prior to 1996, the INA provided for two types of proceedings to adjudicate the legal status of noncitizens: "deportation" proceedings and "exclusion" proceedings. *Ibragimov v. Gonzales*, 476 F.3d 125, 130 n.11 (2d Cir. 2007); *Chen v. Almodovar*, No. 25-CV-8350, 2025 WL 3484855, at *3 (S.D.N.Y. Dec. 4, 2025) (quoting *Judulang v. Holder*, 565 U.S. 42, 45 (2011)). Noncitizens who arrived at a port of entry were placed in exclusion proceedings and were subject to mandatory detention absent a discretionary grant of humanitarian parole. *see, e.g.*, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1226(b) (1994)). In contrast, noncitizens who managed to successfully, even if illegally, effect an "entry" into the United States were placed in deportation proceedings, and, unlike those in exclusion proceedings, "they were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *Ibragimov*, 476 F.3d at 130 n.11; *Chen*, 2025 WL 3484855, at *3. Noncitizens were thus treated differently under the INA depending on whether they had *entered* the United States, and "entry" in this regard was defined broadly as "any coming of an alien into the United States." 8 U.S.C. § 1101(a)(13) (1994).

This pre-1996 INA framework had an "unintended and undesirable consequence" of creating a statutory scheme under 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 [at a port of entry] were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3rd Cir. 2012) (quoting *Hing Sum*, 602 F.3d at 1100); *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") (noting that "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").

In 1996, Congress overhauled the INA through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that enactment added 8 U.S.C. § 1225(a)(1) to the INA to "*ensure that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.*'" *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (quoting 8 U.S.C. § 1225(a)(1) and citing House Rep. at 225-29) (emphasis added). Section 1225(a)(1) provides, in pertinent part, that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

By enacting IIRIRA, Congress thus eliminated the INA's prior focus on "entry" and replaced it with a focus on "admission," defined as "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); *Ibragimov*, 476 F.3d at 130 n.11. In other words, IIRIRA amended the INA to no longer distinguish aliens based on whether they had managed to evade detection by immigration authorities when entering the country illegally. IIRIRA also replaced the exclusion-deportation dichotomy with a single category of "removal proceedings." *Ibragimov*, 476 F.3d at 130 n.11.

### *2. Detention of Applicants for Admission Under 8 U.S.C. § 1225*

As touched upon above, 8 U.S.C. § 1225(a) defines the term "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1). Section 1225(a) further provides that "[a]ll aliens . . . who are applicants for admission or otherwise seeking admission . . . shall be inspected by immigration officers" to determine their admissibility under the INA. 8 U.S.C. § 1225(a)(3).

Upon requisite inspection by an immigration officer, all applicants for admission generally "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). And, "read 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).

Section 1225(b)(1), which provides a track for *expedited* removals, applies generally to aliens who are "arriving in the United States" and found to be inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7) (*i.e.*, due to certain fraud or willful misrepresentation, or lack of valid documentation) at the time of inspection. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(1) also permits the Attorney General to designate certain other aliens for expedited removal, provided that such aliens: have not been admitted or paroled into the United States; are inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7); and have not affirmatively shown to the immigration officer that they have been present in the United States continuously for the two-year period immediately preceding inspection. 8 U.S.C. § 1225(b)(1)(A)(iii).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)," *id.*, to include noncitizens who are already present in the United States and who have not been lawfully admitted. 8 U.S.C. § 1225(a)(1); *see, e.g.*, *Chen*, 2025 WL 3484855, at *3.

Under § 1225(b)(2), an individual "who is an applicant for admission" "shall be detained" for full (*i.e.*, non-expedited) removal proceeding under 8 U.S.C. § 1229a, "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see, e.g.*, *Chen*, 2025 WL 3484855, at *3; *Hurtado*, 29 I. & N. Dec. at 223; *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025).

The mandatory detention required by § 1225(b)(2) extends throughout the applicant for admission's removal proceedings. *See Jennings*, 583 U.S. at 302. In such proceedings, an Immigration Judge shall decide the inadmissibility or deportability of the alien. *See* 8 U.S.C. § 1229a(a)(1). Such proceedings are the "sole and exclusive procedure for determining whether [the subject] alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

### *3. Detention of Other Aliens Under 8 U.S.C. § 1226*

Section 1226 provides generally for arrest and detention of an alien "on a warrant" "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The statute makes no reference to "applicants for admission."

Under 8 U.S.C. § 1226(a), the government may detain an alien during removal proceedings, release the individual on bond, or release the individual on conditional parole, and an alien may request a custody redetermination by an Immigration Judge 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 Immigration Judge 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 such a bond hearing, either party disagrees with the decision of the Immigration Judge, that party may appeal that decision to the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

## STANDARD OF REVIEW

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 Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress has separately stripped the court of jurisdiction to hear the claim.

To warrant the grant of a 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); *Walker v. Johnston,* 312 U.S. 275, 286 (1941); *Skaftourous v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

## ARGUMENT

### A. Petitioner's Detention Is Mandated by 8 U.S.C. § 1225(b)(2).

"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)). Here, an examination of the relevant statutory text supports Federal Respondents' position that Petitioner is an applicant for admission who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).[2]

#### *1. Petitioner Is an Applicant for Admission.*

Petitioner is an applicant for admission because he is present in the United States without having been lawfully *admitted* to this country. Section 1225(a)(1) defines an "applicant for admission" as "[a]n 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). In other words, the term encompasses both

[2] A growing number of district courts (including at least two sister courts within the Second Circuit) have agreed with Federal Respondents' stated position and held that a noncitizen who is present in the United States but has not been admitted to this country is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g.*, *Chen v. Almodovar*, No. 25-CV-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Cabanas v. Bondi*, No. 25-CV-4830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Mejia Olalde v. Noem*, No. 25-CV-168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Sandoval v. Acuna*, No. 25-CV-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-2325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-CV-11983, 2025 WL 2108913 (D. Mass. Jul. 28, 2025). However, the vast majority of district courts to have addressed this issue have rejected Federal Respondents' stated position and held that a noncitizen who is already in the United States is generally subject to detention pursuant to 8 U.S.C. § 1226(a), under which detainees are entitled to a bond hearing, s*ee, e.g.*, *Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *13 App'x A (S.D.N.Y. Nov. 26, 2025) (collecting cases), and this Court has sided with that majority in deciding a number of other recent cases. *See, e.g.*, *Walizada v. Trump*, No. 25-CV-768, 2025 WL 3551972 (D. Vt. Dec. 11, 2025) (Reiss, C.J.); *Yupangui v. Hale*, No. 25-CV-884, 2025 WL 3207070 (D. Vt. Nov. 17, 2025) (Sessions, J.); *Lopez v. Trump*, No. 25-CV-863, 2025 WL 3264151 (D. Vt. Nov. 17, 2025) (Crawford, J.).

(1) arriving aliens and (2) those aliens who are already present in the United States, albeit without having been lawfully admitted. *See id*; *Cruz-Miguel v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011) ("After IIRIRA, both aliens arriving at the border and aliens already present in the United States without inspection [and admission] are deemed 'applicants for admission' who must "be inspected by immigration officers' to determine their admissibility.") (quoting 8 U.S.C. §§ 1225(a)(1), 1225(a)(3)); *Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that aliens whose entry into the United States was not lawful or authorized are not considered "admitted" to the United States, and they are treated as "applicants for admission" and deemed to be legally at the border); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining "admission and "admitted" with respect to an alien as "the lawful entry of the alien into the United States after inspection by immigration and authorization by an immigration officer").

Petitioner is present in the United States, and he does not (and cannot) assert that he was lawfully admitted to this country. He thus fits squarely within the § 1225(a)(1) definition of an "applicant for admission," and he will remain an applicant for admission until his removal proceedings conclude. *See, e.g.*, *Ibragimov*, 476 F.3d at 131 ("[A]n individual who is an 'applicant for admission' to the United States at the time of his removal proceeding is deemed to be legally at the border and bears the burden of establishing that he is 'clearly and beyond doubt entitled to be admitted and is not inadmissible . . . .").[3]

[3] In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court observed that § 1226 applies to "certain aliens already in the country," *id.* at 289, and some district courts have cited that passage in the course of refusing to apply § 1225(b)(2) to noncitizens who are present in this country but have not been lawfully admitted. *See, e.g.*, *Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *3, 5 (S.D.N.Y. Aug. 13, 2025); *see also* Pet. at ¶ 17. *However*, Federal Respondents' interpretation is consistent with *Jennings*; § 1226 is the exclusive source of detention authority for *certain* aliens who already in the country, such as those who were admitted to the United States but are now removable. Nothing in the quoted dicta from *Jennings* suggests that § 1226 is the *sole* detention authority applicable to aliens already in the country. Indeed, the Supreme Court's use of the word "certain" in the subject passage conveys the precise opposite. At a minimum, this dicta from *Jennings* is ambiguous and thus insufficient to displace the statute's plain text, particularly given the manifest congressional intent to eliminate preferential treatment for those who enter the country unlawfully, as discussed above.

### *2. Section 1225(b)(2) Mandates the Detention of Applicants for Admission Who Are Placed Into Full Removal Proceedings Upon Inspection.*

As an applicant for admission who is "not clearly and beyond a doubt entitled to be admitted" to this country, and who does not meet the criteria for expedited removal under 8 U.S.C. § 1225(b)(1), Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). 8 U.S.C. § 1225(b)(2); *see, e.g.*, *Jennings*, 583 U.S. at 288.

Section 1225(b)(2) provides that an alien who is an applicant for admission "shall be detained" for removal proceedings when 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). The statute's use of the term "shall" makes clear that detention is mandatory under the specified circumstances. *See, e.g.*, *Chen*, 2025 WL 3484855, at *3 (holding, in the context of denying a habeas petition, that the petitioner's detention under § 1225(b)(2) was lawful and mandatory because he was present in the United States without having been lawfully admitted); *Chavez v. Noem*, No. 25-CV-2325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (holding, in the context of denying motion for temporary restraining order, that the movant-petitioners who entered the United States without inspection or parole were subject to mandatory detention under § 1225(b)(2)); *Pena v. Hyde,* No. 25-cv-11983, 2025 WL 2108913, *1 (D. Mass. July 28, 2025) (holding, in the context of denying habeas relief, that 1225(b)(2) applied to require the detention of the petitioner, who entered the country unlawfully and remained an "applicant for admission" despite a pending visa application).

Petitioner falls squarely within the ambit of § 1225(b)(2)(A). As discussed above, he is an applicant for admission because he was "present in the United States" when encountered by immigration officers, and he has "not been admitted," 8 U.S.C. § 1225(a)(1), and he does not contend that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Petitioner argues that § 1225(b)(2) cannot not apply to him, and that his detention is instead authorized, if at all, by § 1226(a), because, "as a person already present in the United States," [he] is not presently 'seeking admission' to the United States." Pet. at ¶ 17. His argument fails to withstand scrutiny.

Section 1225(a) makes clear that an alien who is deemed to be an "applicant for admission" is, *by virtue of that very status*, "seeking admission" in the present tense. *See* 8 U.S.C. § 1225(a)(3) (referring to "[a]ll aliens who are applicants for admission *or otherwise seeking admission* . . . .") (emphasis added); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932, at *2 (W.D.N.Y. Dec. 4, 2025) (quoting 8 U.S.C. § 1225(a)(3)). Petitioner is thus deemed to be presently seeking admission to this country irrespective of whether he has actively sought admission. As the Second Circuit has repeatedly instructed, "[a]liens not admitted are treated as 'applicants for admission,'" and "[t]hey are 'deemed to be legally at the border' and bear the burden of establishing their entitlement to admission." *Ascencio-Rodriguez*, 595 F.3d at 108 n.3 (quoting *Ibragimov*, 476 F.3d at 131).

Moreover, Petitioner's interpretation of § 1225(b)(2) subverts one of IIRIRA's stated goals. As discussed above, one of IIRIRA's express objectives was to dispense with the inequitable pre-1996 statutory scheme under which aliens who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. House Rep. at 225. Petitioner's reading of § 1225(b)(2) "flies in the face of Congress' decision, codified in [] IIRIRA, to change the immigration system that had turned on whether 'an alien [was] already here,' and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry." *Chen*, 2025 WL 3484855, at *5 (quoting *Judulang*, 565 U.S. at 45). This Court should therefore reject Petitioner's invitation to hold that § 1225(b)(2) applies only to

some subset of applicants for admission who are actively and affirmatively seeking admission in some manner, as such a holding would negate IIRIRA's stated purpose and "establish a perverse system in which an alien becomes subject to harsher treatment only upon actively seeking 'lawful' status." *Chen*, 2025 WL 3484855, at *5; *see also, e.g.*, *King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting a statutory interpretation that would lead to a result "that Congress designed the [subject statute] to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").[4]

**B. Petitioner's Detention Does Not Violate the Constitution.**

Because Petitioner is properly detained under § 1225(b)(2), which mandates detention during removal proceedings, he is not entitled to a bond hearing. He claims that his lack of access to a bond hearing violates his right to due process, but it is well established that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

In *Demore*, 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. In doing so, the Court reaffirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary

[4] Prior agency practice does not change the foregoing analysis. "A failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law." *Chen*, 2025 WL 3484855, at *7 (citing U.S. Const., Art. I, § 7). Courts must "independently interpret the statute [at issue] and effectuate the will of Congress subject to constitutional limits." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024); *see, e.g.*, *Romero v. Bondi*, No. 25-CV-993, 2025 WL 2490659, at *3 (E.D. Va. July 2, 2025) (holding, in the context of denying habeas relief, that the petitioner's detention was governed by § 1225(b)(1)(B)(ii) because, despite having been released under § 1226(a) and later re-detained, the petitioner had not been admitted to the United States and thus remained an "applicant for admission"); *see also, e.g.*, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 227 (BIA 2025) ("[T]he mere issuance of an arrest warrant [citing § 1226(a)] does not endow an Immigration Judge with authority to set bond for an alien who falls under [§ 1225(b)].")

for their removal proceedings." *Id.* at 526; *see also id.* ("[W]hen 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.* at 522 ("Congress may make rules as to aliens that would be unacceptable if applied to citizens.").

Here, Petitioner's detention pursuant to § 1225(b)(2), while mandatory, is not indefinite.[5] Rather, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, such detention shall continue "until removal proceedings have concluded." *Id.* (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.[6] Petitioner does not appear to specifically challenge the duration of his detention at this time, nor can he credibly do so, as he has been detained for only one week as of the time of this submission. *See* Pet. at ¶ 5; *Candido*, 2025 WL 3484932, at *5 ("[G]iven the relatively short duration of Petitioner's detention—approximately three months—any constitutional argument for habeas relief separate from the statutory one raised here, *if possible*, would be premature.") (internal citations omitted).

### C. Petitioner's Age-Based Status at the Time of His Entry Is Immaterial.

To the extent that Petitioner is claiming that he is not subject to detention under § 1225(b)(2) because he was deemed an "unaccompanied alien child" at the time of his initial encounter with immigration officers in 2022, or because of his related classification as a Special Immigrant Juvenile, *see* Pet. at ¶¶ 2-4, 15-16, he is mistaken.

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[5] Moreover, while § 1225(b) does not provide for bond hearings, it does not entirely preclude relief from detention; DHS is statutorily authorized to grant to those who are detained under §§ 1225(b)(1) or (b)(2) temporary parole for "urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). Here, the Petition is silent as to whether Petitioner has sought such parole.

[6] In *Demore*, the Supreme Court explained that, unlike the potentially indefinite detention at issue in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which was a case that concerned the detention of aliens *following a final order of removal*, detention during removal proceedings has a "definite termination point" and therefore does not implicate the same due process concerns. 538 U.S. at 529.

It is undisputed that Petitioner was already 19 years of age and no longer in ORR custody on December 11, 2025, when he was arrested by ICE, placed into removal proceedings, and detained pending the resolution of those proceedings. Pet. at ¶ 1, 5. Because he had reached the age of majority, Petitioner was no longer an "unaccompanied alien child" (or "UAC") as that term is defined in the TVPRA. *See* 8 U.S.C. § 1232(g) (defining "unaccompanied alien child" by reference to the definition set forth in in 6 U.S.C. § 279(g)); 6 U.S.C. § 279(g)(2)(B) ("[T]he term 'unaccompanied alien child' means a child who . . . has not attained 18 years of age . . . ."). As a sister court within this Circuit held in denying a habeas petition filed in a factually similar case:

> Because [Petitioner] no longer met the statutory definition of a UAC when he was arrested by [ICE], he is not entitled to the legal protections afforded to UACs. And because Congress has authorized—and indeed directed—that immigrants without legal authorization be detained during the pendency of their removal proceedings, [Petitioner's] detention does not violate his due process rights.

*Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 204 (S.D.N.Y. 2020); *see Maazouz v. Almodovar*, No. 25-CV-9388, 2025 WL 3520479, at *4 (S.D.N.Y. Dec. 8, 2025) (holding that the petitioner "was not a UAC when his current detention began as he had already reached the age of eighteen") (citing 6 U.S.C. § 279(g)(2)).[7]

Petitioner also aged out of the protections afforded to minors under the so-called "Flores Agreement" that settled a class action concerning the Government's treatment of *minors* in the

[7] Unaccompanied alien children who reach 18 years of age *while in ORR custody* are returned to the custody of the Secretary of DHS, who "shall consider placement [of the individual] in the least restrictive setting available after taking into account the alien's danger to self, danger to the community and risk of flight." 8 U.S.C. § 1232(c)(2)(B). However, that statutory mandate does not apply to unaccompanied alien children who are no longer in ORR custody when they reach 18 years of age. *See Mendez Ramirez*, 612 F. Supp. 3d at 210-15 (holding that an unaccompanied alien child who ORR had placed with a family-member sponsor was no longer in ORR custody when he reached 18 years of age, and he was therefore not entitled to the protections afforded by § 1232(c)(2)(B)) when ICE subsequently took him into custody following his arrest on state-law charges); *Maazouz*, 2025 WL 3520479, at *4 (same); *see also, e.g.*, ORR, *Unaccompanied Alien Children Bureau Policy Guide*, https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last visited Dec. 18, 2025), at § 2.8.3 ("Once a child is released to a sponsor, ORR's custodial relationship with the child terminates.").

custody of immigration authorities. *See* Pet. at ¶ 3; *Flores v. Lynch*, 828 F.3d 898, 901-03 (9th Cir. 2016) (summarizing the *Flores* litigation). By its plain terms, the Flores Agreement applies only to minors. *See* Ex. 1 to Plaintiff's Motion for Class-Wide Enforcement of Settlement, *Flores v. Reno*, No. 85-CV-4544 (C.D. Cal. Feb. 2, 2015) (ECF Doc. No. 101), at ¶ 4 ("This Agreement shall cease to apply to any person who has reached the age of eighteen years.").

Nor does Petitioner's classification as a Special Immigrant Juvenile confer, in and of itself, relief from mandatory detention under § 1225(b)(2). *See* Pet. at ¶¶ 15-16. To borrow the language of another district court:

> The fact that petitioner has been given special immigrant juvenile ("SIJ") status has no effect on ICE's statutory and regulatory authority to detain him. Other federal courts have routinely recognized that SIJ status alone does not render an alien lawfully present in the country and thus does [*sic*] him to release, nor does it prevent the government from affecting his removal.

*Benito Vasquez v. Moniz*, 788 F. Supp. 3d 177, 181 (D. Mass. 2025); *see id* (collecting cases). Rather, that classification renders an individual eligible to apply for an employment-based, fourth-preference special-immigrant visa ("EB-4 visa") under 8 U.S.C. § 1153(b)(4), and, once such a visa becomes available, to seek an adjustment of status to that of lawful permanent resident (colloquially known as a "green card"). *See, e.g.*, USCIS, *Special Immigrant Juveniles*, https://www.uscis.gov/working-in-US/eb4/SIJ (last visited Dec. 18, 2025). If no EB-4 visa is available when a person is approved for classification as a Special Immigrant Juvenile, the person cannot yet apply for an adjustment of status. *See* 8 U.S.C. § 1255(a) (providing that an adjustment of status may be granted, as a matter of discretion, only if, among other things, "an immigrant visa is immediately available to [the applicant] at the time his application is filed"). Here, the Petition is silent as to whether Petitioner has obtained an EB-4 visa and, if so, applied for a green card, but it is safe to assume from such silence that he has not yet obtained a visa, let alone a green card.

And, while USCIS exercised its discretion to grant Petitioner temporary deferred action while he awaits an EB-4 visa, the agency has since exercised its discretion to *terminate* his deferred action. *See* ECF Doc. No. 1-1 (notifying Petitioner that he had been temporarily deferred action for a period of four years "*unless terminated earlier* by USCIS"); Ex. B (Termination Notice); *cf. Primero v. Mattivelo*, No. 25-CV-11442, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (granting habeas relief to petitioner who had been granted Special Immigrant Juvenile status and deferred action because USCIS had not yet terminated its grant of deferred action to the petitioner).

**D. Any Potential Relief Should be Limited to a Bond Hearing.**

Petitioner "asks this Court to order his immediate release or, in the alternative, to order the government to provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order [resolving the Petition]." *See* Pet. at 2-3. Should this Court disagree with Federal Respondents and determine that Petitioner is subject to detention pursuant to 8 U.S.C. § 1226(a), the appropriate remedy would be to order that Petitioner be provided an individualized bond hearing before an Immigration Judge, not immediate release.

Although some courts have ordered the immediate release of a detainee held in violation of due process, "the comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an [Immigration Judge]." *Lopez-Arevelo v. Ripa*, No. 25-CV-337, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025). As the court noted in *Lopez-Arevelo*, the petitioner's rights "are not violated by the very fact of his detention. Rather, they are violated because he has been detained without a bond hearing that accords with due process." *Id.* District courts across the country, including this Court, have thus ordered that a bond hearing be held in cases presenting such circumstances. *See, e.g., Lopez v. Trump*, No. 25-CV-863, 2025 WL 3264151, at *6 (D. Vt. Nov. 17, 2025); Opinion and Order, *Piedrahita-Sanchez v. Turek*, No. 25-CV-875 (D. Vt. Nov. 14, 2025) (ECF Doc. No. 13), at 18; *Yapangui v. Hale*, No. 25-CV-884, 2025

WL 3207070, at *8 (D. Vt. Nov. 17, 2025); Order, *Lala Inamagua v. Hale*, No. 25-CV-892 (D. Vt. Dec. 1, 2025) (ECF Doc. No. 19), at 6; *Rashid v. Hale*, No. 25-CV-732 (D. Vt. Oct. 27, 2025) (ECF Doc. No. 13), at 32; *but see, e.g.*, *Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *15 (S.D.N.Y. Aug. 13, 2025) (ordering immediate release following the grant of habeas relief for a violation of the petitioner's right to due process).

For the foregoing reasons, habeas relief is unwarranted, and the Petition should be denied. However, even if the Court were to find that Petitioner has met his burden to justify judicial intervention, the Court should order, not his immediate release, but that Petitioner be afforded a bond hearing before an Immigration Judge consistent with § 1226(a).

**CONCLUSION**

For the reasons discussed above, the Court should (1) deny the Emergency Petition for a Writ of Habeas Corpus (ECF Doc. No. 1) and (2) dissolve the Court's Temporary Restraining Order of December 13, 2025 (ECF Doc. No. 2).

Dated at Burlington, in the District of Vermont, this 18th day of December, 2025.

Respectfully submitted,

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