IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JOHNNY JAVIER HERNANDEZ CRUZ,
[redacted] **PETITIONER**

v. **Civil Action No. 5:25-cv-00157-DCB-BWR**

WARDEN RAFAEL VERGARA,
Adams County Correctional Center **RESPONDENT**

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Warden Rafael Vergara of Adams County Correctional Center ("Respondent"), by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney, submits this Response in Opposition to the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Complaint for Injunctive and Declaratory Relief filed by Johnny Javier Hernandez Cruz ("Petitioner"). *See* ECF No. 1, *Petition*. As set forth herein, the Petitioner is not entitled to the relief sought and the habeas petition should be denied.

Relevant Facts

Petitioner is a native and citizen of Honduras. *See* ECF No. 1, *Petition*, p.3. He illegally entered the United States without admission or parole at or near an unknown place on or about an unknown date.[1] *See* Exhibit A, *Notice to Appear*. On November 5, 2025, Petitioner was detained by immigration officials and is being housed at the Adams County Correctional Center in Natchez, Mississippi. On the same date, immigration officials served the Petitioner a Notice to Appear

[1] Petitioner contends he has resided in the United States since approximately 2001. *See* ECF No. 1, *Petition*, p. 1 and 3.

("NTA") before an Immigration Judge ("IJ") on January 14, 2026, for a custody redetermination (bond) hearing based on violations of Sections 212(a)(6)(A)(i)[2] of the INA. *Id.* Before the bond hearing, the Petitioner failed to file any applications for relief or protection from removal during the required period, so the IJ ordered the Petitioner removed to Honduras on December 11, 2025. *See* Exhibit B, *Order of the Immigration Judge*. The Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). *See* Exhibit C, *Record of Proceeding*. Currently, there is no final order of removal.

Although the Petitioner is in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act ("INA") and Section 1229a of Title 8 of the United States Code, he filed the instant petition on December 15, 2025, requesting release or a bond redetermination hearing before an IJ. *See* ECF No. 1, *Petition*, p. 3. His request is contrary to law. For the reasons that follow, this Court should deny this habeas petition without the need for an evidentiary hearing.

Legal Framework

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who "entered" the country after successfully evading inspection were entitled to seek bond.[3] *See Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228*4 (S.D. Cal. Sept. 24, 2025),

[2] An alien without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General.

[3] At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025);

(*citing Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024)).

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal. Among other things, the law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928.

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been lawfully admitted." House Rep., supra, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223. IIRIRA effected these changes through several provisions codified in Section 1225 and 1226 of Title 8:

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see 8 U.S.C. § 1225(a)-(b) (1995); 8 U.S.C. § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

I. Section 1225(a)

Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. It unambiguously provides:

> An 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). The "or" in this statute is disjunctive and indicates that these are two different types of aliens both of which are considered an applicant for admission: (1) present and not admitted, or (2) arriving in the U.S. Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an "applicant for admission".

II. Section 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. It states:

> All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

8 U.S.C. § 1225(a)(3). The immigration officer's inspection is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, referred to removal proceedings. The IIRIRA divided removal proceedings into two tracks: (1) expedited removal, and (2) non-expedited "Section 240" proceedings, and it mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United

States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to applicants for admission falling under the specifications of subsection (b)(1), the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien being considered for expedited removal or who has been ordered removed "shall be detained pending determination and removal." *See* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is broader than (b)(1), serving as a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The key distinction between sections (b)(1) and (b)(2) is that (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under Section 1229a. Both sections, however, require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of Section 1229a removal proceedings. In particular, Section 1225(b)(2) requires detention for those aliens with pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added)[4]; *see also* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While an applicant is subject to the mandatory detention provisions of Section 1225(b), the Department of Homeland Security ("DHS") retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). The INA however remains clear that even "such parole of such alien shall not be regarded as an admission of the alien" and when the purpose of parole, in the discretion of DHS, has been served, the alien should be returned to custody and treated as any other applicant for admission. *Id.*

III. Section 1226 – Apprehension, Detention and Release

Section 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)). Generally, Section 1226 "governs the process of arresting and detaining that group of aliens pending their removal."[5] *Id.*

[4] Exceptions to Subsection (b)(2) are: (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

[5] IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226.

The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority. The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.*, *see* 8 U.S.C. § 1226(a)(1) (DHS "may [however] continue to detain the arrested" alien during the pendency of removal proceedings).

Argument

In his prayer for relief, Petitioner alleges his arrest, and detention is in violation of (1) Section 1226, (2) the Administrative Procedures Act, and (3) the Due Process Clause. ECF No. 1, *Petition*, pp. 8-9. The Petition makes no mention of the authority under which the Court can grant such relief.

I. Petitioner's Claims Lack Jurisdiction Under Rule 12(b)(1)

A. 8 U.S.C. § 1252(g) bars review of Petitioner's claims.

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 his 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.") (internal quotations and citations omitted); *Valencia-Mejia v. United States*, 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."); *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'"). In short, the decision as to the method by which removal proceedings are commenced and the adjudication of those immigration proceedings is a discretionary one that is not reviewable by a district court under Section 1252(g). *See id.* at 487. As such, judicial review of the Petitioner's claims is barred by § 1252(g).

B. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims.

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, 481 (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.* at 483; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(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).

Critically, "[S]ection 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 and can be exercised only after the alien has exhausted administrative remedies."). 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 [IIRIRA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

Essentially, subsections (a)(5) and (b)(9) 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. 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). 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 frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain him, such creative framing does not evade the preclusive effect of § 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).

II. Petitioner Failed to Exhaust Administrative Remedies.

A. The agency decision denying release is not administratively final.

Normally, a habeas petitioner must exhaust administrative remedies before seeking federal court intervention. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331*3 (S.D. Tex. Nov. 13, 2025). The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, protect the authority of administrative agencies, and otherwise conserve judicial resources by limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Gutierrez Cupido v. Barr*, 2019 WL 4861018, *1 (S.D.N.Y. Oct. 2, 2019).

Here, the Petitioner contends "[a]ny request for a bond hearing before the immigration court is futile." *See* ECF No. 1, *Petition*, p. 7. Yet, he appealed the IJ's order of removal with the BIA[6]. *See* Exhibit C, *Record of Proceeding*. The appeal is pending, and no final administrative bond order exists.

[6] By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3).

B. Petitioner Lacks Standing to Bring Administrative Procedures Act Claim.

Since there is no administratively final bond order, the Petitioner also lacks standing to bring his APA claim. The Administrative Procedures Act ("APA") is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (*citing Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). Because there is no final administrative bond order, the Petitioner's APA claim is independently barred by the limitation in 5 U.S.C. § 704.

III. The Plain Language of Section 1225(b)(2) Mandates Detention.

Section 1225 expressly provides "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) "present in the United States who has not been admitted" to be an "applicant for admission." *Id.* Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. While this may seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Under the plain text of the statute, the Petitioner is unambiguously an "applicant for admission" because he is a foreign national who was not properly admitted, and he was present in the United States when he was apprehended by DHS.

The next relevant portion of the statute addresses whether an examining immigration officer determined that Petitioner was "seeking admission." See 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" 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). Therefore, the inquiry is whether an immigration officer determined that Petitioner was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This element of "lawful entry" is important for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411-12 (2021) (recognizing that "admission" means "lawful entry"). Second, a foreign national cannot remain in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). The charges of removal against Petitioner are based on his unlawful entry. So, unless Petitioner obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), & 1227(a)(1)(A).

In contrast, the INA provides two examples of foreign nationals who have not yet been admitted but are not "seeking admission." The first is someone who withdraws his or her application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen*, 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under Section 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means, even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under Section 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is not the same as an expedited removal under Section 1225(b)(1). Instead, under Section 1225(b)(2), removal proceedings must proceed as outlined under Section 1229a.

In this case, the Petitioner is an "applicant for admission", as he is not a citizen or national of the United States, was found present within the United States, has not been admitted, has not agreed to immediately depart, and is seeking to remain in this country. *See Thuraissigiam*, 591 U.S. at 108-09 (discussing how "[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," is deemed "an applicant for admission"). Since he is an "applicant for admission" meeting the textual element of § 1225(b)(2)(A) and he is currently in 1229a removal proceedings, the Petitioner is subject to mandatory detention during the pendency of these proceedings. *See* 8 U.S.C. § 1225(b)(2)(A).

IV. Petitioner's argument that § 1226, rather than § 1225, should apply to his detention is flawed.

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).

The crux of this dispute is one of statutory interpretation. The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in Section 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 Section 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. History supports the result required by the plain language of the statute itself. Indeed, other district courts, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *See, e.g., Oliveira v. Patterson*, 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. 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); *Rene Garibay-Robledo v. Noem*, 25-cv-177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025) (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Lopez v. Trump*, 25-cv-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Alves de Andrade v. Patterson*, Case No. 6:25-cv-1695, ECF No. 9 at pp. 13-14 (W.D. La. Nov. 21, 2025) (the legislative history makes clear that lawfully admitted aliens should not be worse off than those who crossed the border unlawfully).

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. See 8 U.S.C. § 1225(b)(2). And for good reason. Detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch could give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531. Congress's mandate is supported by eminently reasonable grounds. After all, where, as here, "the words of a statute are unambiguous, this first step of the interpretive inquiry [*i.e.*, construing the statutory text] is [the court's] last." *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (citation omitted).

Notably, a district court in this Circuit recently denied an injunction and request for a bond hearing under Section 1226, noting the very real distinction between an "arriving alien" and an "applicant for admission" with respect to the application of § 1225(b) and its mandatory detention requirement. *See Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478, at *2 (N.D. Tex. Oct. 24, 2025). As that Court stated:

> To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as "[a]n alien . . . who arrives in the United States." But the same provision also defines an applicant for admission as "[a]n alien present in the United States who has not been admitted." *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

Id. The court conducted a review of legislative history and further noted that by defining "applicants for admission" broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *6-7.

Accordingly, the plain language of Section 1225(b)(2), requires DHS to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States. This Court should follow the reasoning in the *Oliveira*, *Sandoval*, *Kum*[7], and the reasoning in other sister courts[8], and find that Petitioner is properly detained under § 1225(b)(2) and subject to mandatory detention as an "applicant for admission" during the pendency of his removal proceedings under § 1229a.

V. Petitioner's detention does not violate due process.

As previously mentioned, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States, like Petitioner. See 8 U.S.C. § 1225(a)(1). And Congress directed that alien, like Petitioner, shall be detained during their removal proceedings. 8 U.S.C. § 1225(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 have crossed borders and traveled in violation of United States law (by definition). That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has also 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

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[7] *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025).

[8] *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025); and *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025).

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.").

In another immigration context involving 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 the *Jennings* court, stating "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 explained why the *Zadvydas* opinion does not provide authority to graft a time limit into 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.

In *Demore*, as is the case here, the alien 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. 538 U.S. at 513. The Supreme Court rejected the argument and explained that Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. It emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512. The *Demore* Court held "[d]etention during removal proceedings is a constitutionally permissible part of that process." 538 U.S. at 531. 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. *Id.* at 512., *generally.*

Likewise, Petitioner's detention does not violate due process, as 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). The Petitioner is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his removability from the United States. Petitioner's detention under Section 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal or removal proceedings. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. *See Kum v. Ross, et al.*, 2025 WL 3113636 *2 (W.D. La. Oct. 22, 2025) (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional), *report and recommendation adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025).

Conclusion

For the reasons explained above, Petitioner's petition for writ of habeas corpus and claims for equivalent injunctive relief should be denied and Petitioner's detention should remain undisturbed, as he is subject to mandatory detention for the duration of his removal proceedings.

Date: January 12, 2026

Respectfully submitted,

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