IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANCISCO RAMIREZ-URA	*	
	*	
Petitioner,	*	
v.	*	Civil Action No. 25-CV-4162-PX
	*	
PAMELA BONDI, ET AL.,	*	
	*	
Respondents.	*	

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MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

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TABLE OF CONTENTS

I. FACTUAL AND PROCEDURAL BACKGROUND 2
II. LEGAL STANDARDS 3
III. ARGUMENT 4
A. The Court Lacks Jurisdiction Over the Relief Sought in the Motion and Petition. 5
B. Petitioner's Detention is Constitutional 7
1. Applicants for admission are subject to detention under 8 U.S.C. § 1225. 7
2. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A). 10
3. Section 1226 does not impact the detention authority for applicants for admission 21
C. Petitioner's Fourth Amendment Challenge is Improperly Raised via this Petition. 26
D. Petitioner's APA Claim Lacks Merit 28
IV. CONCLUSION 29

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Petitioner, Fransico Ramirez-Ura ("Petitioner"), is a citizen and native of Peru who has entered into the United States without being inspected, admitted, or paroled, *i.e.*, he has entered this country illegally. On December 15, 2025, Petitioner was encountered by ICE and determined to be present unlawfully and without documentation, arrested, and served with a Notice to Appear ("NTA"). Based on his unlawful entry and unlawful presence, Petitioner was charged as inadmissible under Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) and INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)). ICE subsequently initiated removal proceedings pursuant to 8 U.S.C. § 1229a. Under the INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)) charge, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). He is presently detained by ICE at the South Texas ICE Processing Center in Pearsall, TX pending his ongoing removal proceedings.

On December 17, 2025, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition") and a Motion for a Temporary Restraining Order ("Motion") while was being held by ICE in Baltimore, Maryland. ECF Nos. 1, 4. The Petition contends his detention is unlawful, violates his Constitutional rights, and is the result of an improper interpretation of the INA. *See* ECF No. 1.

The Petition seeks an order declaring that his continued detention violates the Fourth and Fifth Amendments, an order requiring his immediate release (on reasonable conditions of supervision if necessary), as well as an order directing Respondents to show cause as to why his requested relief should not be granted. *Id.* at pp. 8-9. His Motion seeks injunctive relief in the form of a Temporary Restraining Order precluding his removal based on violations of the Administrative Procedures Act (APA), as well as the Fourth Amendment bar against unreasonable seizures, the Fifth Amendment Due Process Clause, and the Eighth Amendment bar against cruel and unusual punishment. ECF No. 4 at 6.

However, both the Petition and Motion fail for several reasons and must be dismissed. First, there are bases to deny, and ultimately dismiss, the Petition jurisdictionally: 8 U.S.C. § 1252(e)(3), which limits judicial review of determinations under 8 U.S.C. § 1225(b) and its implementation to only in the District Court for the District of Columbia. Second, Petitioner is properly detained under the INA and 8 U.S.C. § 1225, and his detention for the sum-total of *twenty-five (25) days* does not violate his Fifth Amendment due process rights, nor does it violate the Fourth Amendment or the APA. Accordingly, because Petitioner is unlikely to succeed on the merits, his Motion along with his Petition should be dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Given that Petitioner entered the United States in 2004 without being inspected, admitted, or paroled, he is an applicant for admission. ECF No. 1 ¶ 12. On December 15, 2025, ICE Baltimore Enforcement and Removal Operations ("ERO") was conducting enforcement operations, lawfully encountered Petitioner, and determined that he had no claim to U.S. Citizenship or legal immigration status. Exhibit 1 ("Ex."), December 15, 2025 NTA. The NTA

charges Petitioner as inadmissible under 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I). *Id.* Petitioner was subsequently transferred to the South Texas ICE Processing Center.

Pursuant to the NTA, Petitioner's removal proceedings remain ongoing. Petitioner was scheduled to appear before an Immigration Judge in Pearsall, TX on January 20, 2026. To date, neither Petitioner nor his counsel have filed anything in the removal proceedings.

II. LEGAL STANDARDS

Before a court may rule on the merits of a claim, it must first determine if "it has the jurisdiction over the category of claim in suit" namely, subject matter jurisdiction. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-102 (1998)). The burden of proving subject matter jurisdiction rests with the plaintiff. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). In determining whether subject matter jurisdiction exists "as a threshold matter" a court "may consider evidence outside the pleadings. *Evans*, 166 F.3d at 647; *see also Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995).

Like a preliminary injunction, a TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief' and may never be awarded 'as of right.'" *Mountain Valley Pipeline, LLC v. W. Pocahontas Properties Ltd. P'ship*, 918 F.3d 353, 366 (4th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008)). As such, a party "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Roe v. Dep't of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), *as amended* (Jan. 14, 2020) (citation omitted).

District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). That power extends, *in certain circumstances*, to include habeas challenges to immigration related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). However, the Court cannot extend the writ of habeas corpus unless an individual "is in custody in violation of the Constitution or the law or treaties of the United States." § 2241(a); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020).

To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), the complaint must allege sufficient facts to establish the elements of the claim. *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012). Courts need not accept "legal conclusions couched as facts or unwarranted inferences, unreasonable conclusions, or arguments" to decide whether the case survives a motion to dismiss. *U.S. ex rel. Nathan v. Takeda Pharm. North Am., Inc.*, 707 F.3d 451, 455 (4th Cir. 2013). This standard applies when considering whether a Petitioner has set forth facts sufficient to establish entitlement to Habeas relief. *See Duncan v. Kavanagh*, 439 F. Supp. 3d 576, 581-82 (D. Md. 2020).

III. ARGUMENT

Plaintiff seeks a Temporary Restraining Order blocking his removal to Peru. He also seeks to invoke this Court's Habeas Corpus authority under 28 U.S.C. § 2241. In support, he also cites to the Administrative Procedure Act (APA), 5 U.S.C. § 701, All-Writs Act, and Declaratory Judgment Act. 28 U.S.C. § 1651, and 28 U.S.C. § 2201, *et seq*. However denoted, Petitioner's suit seeks to challenge his placement in removal proceedings, and his statutorily mandated detention pending resolution of his removal proceedings. This Court therefore lacks authority to afford him the relief he seeks. Petitioner also cannot demonstrate that the statute which mandates

his detention has been improperly interpreted or applied, or that his Constitutional rights have been violated. For these reasons and those that follow, both the Motion and Petition should be denied, and the case dismissed.

A. The Court Lacks Jurisdiction Over the Relief Sought in the Motion and Petition.

The statutory provision that governs judicial review of removal orders is 8 U.S.C. §1252. Three separate provisions of that statute preclude actions like this one, seeking to challenge various aspects of Petitioner's placement in removal proceedings and related detention.

First, 8 U.S.C. § 1252(e)(3)(A) limits judicial review of determinations under 8 U.S.C. § 1225(b) that an alien is inadmissible to (1) whether 8 U.S.C. § 1225(b) or an implementing regulation is constitutional; or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *Id.*; *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Here, Petitioner challenges DHS's determination that he is inadmissible and subject to mandatory detention because he entered the United States without inspection under 8 U.S.C. § 1225(b)(2). *See* ECF at ¶¶ 20-43. Since he seeks to challenge DHS's conclusion regarding his inadmissibility, under 8 U.S.C. § 1252(e)(3)(A) his claim can only be reviewed by the United States District Court for the District of Columbia, this Court therefore lacks the jurisdiction to do so.

Second, 8 U.S.C. § 1252(g) categorically bars judicial review over "any cause or claim by or on behalf of any alien arising from the decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g). The decision to place Petitioner in removal proceedings and charge him as inadmissible as well as the decision to detain him pending removal squarely fall within this jurisdictional bar. See, e.g., Alvarez v. U.S. Immigr. & Customs Enforcement, 818 F.3d 1194, 1203 (11th Cir. 2016) (by its

plain terms, § 1252(g) bars the court from questioning ICE's discretionary decisions to commence removal and its decision to take petitioner into custody and to detain him during removal proceedings); Tazu v. Att'y Gen. U.S., 975 F.3d 292, 298 (3d Cir. 2020) (§ 1252(g) strips us of jurisdiction to review the Attorney General's decision or action to execute a removal order; in order to complete a removal the Attorney General must exercise discretionary power to detain an alien; such a decision does not fall within some other part of the deportation process). As such, even if limited to the question of his detention pending removal, judicial review of Petitioner's claims is clearly barred by 8 U.S.C. § 1252(g).

Third, under 8 U.S.C. § 1252(b)(9), once an individual is in removal proceedings, under 8 U.S.C. § 1229a the removal proceeding before the immigration judge "shall be the sole and exclusive procedure" for determining "whether an alien may be removed from the United States." 8 U.S.C. § 1252(b)(9). That does not mean there is no method to challenge an order of removal. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) (under section 1252(b)(9), if an alien is ordered removed, that decision can be appealed to the Bureau of Immigration Appeals (BIA), and if unsuccessful, can be the subject of a petition for review filed with the appropriate U.S. Court of Appeals). Petitioner cannot avoid this conclusion by seeking to couch his claim as one challenging the application of § 1225 to his removal Petitioner. Section 1252(b)(9) clearly applies to both direct attacks on a removal, as well as questions of statutory interpretation arising from or related to removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 218, 294–95 (2018) (explaining that 8 U.S.C. § 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal"). Here, Petitioner challenges DHS' decision to charge him as inadmissible, and to detain him pending a final order of removal; such a challenge plainly implicates 8 U.S.C. § 1252(b)(9). *See e.g., Jennings*, 583 U.S. at 294–95; *Saadulloev v. Garland*,

No. 3:23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). No matter how creatively couched, Petitioner's claims regarding his detention pending removal are clearly covered by §1252(b)(9); this Court therefore lacks jurisdiction to review them.

B. Petitioner's Detention is Constitutional

Petitioner's claim that his detention violates the Fifth Amendment's Due Process Clause is without merit as the Supreme Court has held that applicants for admission such as Petitioner are only entitled to the protections set forth by statute and that "the Due Process Clause provides nothing more." *See Thuraissigiam*, 591 U.S. 103, 140 (2020). Petitioner does not allege any deprivation of any of the protections set forth by Section 1225 and therefore his due process claim fails. Additionally, the Supreme Court has repeatedly held that "[d]etention during deportation proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

Section 1225 is the proper detention authority, and no bond is available under this provision. Any argument to the contrary represents an overly narrow interpretation of 1225 that many courts – although admittedly no Maryland courts yet – have rejected. That this administration has taken a stricter view of statutory text that had previously been more leniently enforced does not make the administration's position legally incorrect.

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as 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 . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

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

U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner has no parole and has not been admitted. ECF No. 1 at ¶¶ 16-18. Petitioner is, therefore, an alien present who arrived in the United States and is, consequently, an applicant for admission.

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1)[1] or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)"). Immigration officers have discretion to apply expedited removal under 8 U.S.C. § 1225(b)(1) or to initiate removal proceedings before an IJ under 8 U.S.C. § 1229a. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("DHS

[1] Section 1225(b)(1) authorizes immigration officers to remove certain inadmissible aliens "from the United States without further hearing or review" if the immigration officer finds that the alien, "who is arriving in the United States or is described in [8 U.S.C. § 1225(b)(1)(A)(iii)] is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)]." 8 U.S.C. § 1225(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If the Department of Homeland Security (DHS) wishes to pursue inadmissibility charges other than 8 U.S.C. § 1182(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 235.3(b)(3). Additionally, an alien who was not inspected and admitted or paroled, but "who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a]." *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien "[i]f, in accordance with the provisions of [8 U.S.C. § 1225(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [8 U.S.C. § 1229a]").

may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]" (citations omitted)).

2. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).

Applicants for admission whom DHS places in § 1229a removal proceedings are similarly subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) *and* aliens "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ.

Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. Section 1225(b)(2)(A) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), "an alien who is an applicant for admission" "*shall be detained* for a 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) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that "any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]" unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings "*shall* be detained." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' . . . ." *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie*, 540 U.S. at 534 ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between "arriving aliens," *see* 8 C.F.R. §§ 1.2, 1001.1(q), and "aliens who are present without being admitted or paroled," Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997),[2] finds no purchase in the statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to "arriving aliens," or limits that paragraph to arriving aliens, as Congress intended for it to apply generally "in the case of an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to "arriving

[2] As discussed more below, the preamble language of the 1997 Interim Rule states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. However, preambular language is not binding and "should not be considered unless the regulation itself is ambiguous." *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *see also Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir. 2002) ("[T]he plain meaning of a regulation governs and deference to an agency's interpretation of its regulation is warranted only when the regulation's language is ambiguous." (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))).

aliens," it uses that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See also* ECF 4 at 13 (citing *Yajure Hurtado*). In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220.[3]

The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his

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

legal status?" *Id.* (parentheticals in original). The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." *Matter of M-S-*, 27 I&N Dec. 509, 526 (A.G. 2019). The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw

fit").[4] *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention ... throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

Here, Petitioner is an applicant for admission (specifically, an alien present without valid parole), placed directly into removal proceedings under 8 U.S.C. § 1229a. He is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. "It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.*

[4] Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., Moore's Federal Practice § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case"); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida's decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under 8 U.S.C. § 1225(b) meaningless." *Id.*

§ 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An [IJ] is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, "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." *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that "an application for admission [i]s a continuing one").

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] 'shall be detained for a [removal] proceeding' . . . ." *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)).

The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) "applies primarily to aliens *seeking entry* into the United States (*'applicants for admission' in the language of the statute*)." *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens "seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention 'until removal proceedings have concluded.'" 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S. at 299).

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at POEs. *See* 8 U.S.C. § 1225(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 1225(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place

other than as designated by the Attorney General." *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a POE or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Formerly 8 U.S.C. § 1225 provided that aliens "seeking admission" at a POE who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). "Seeking admission" in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a POE.[5] *See id.* The legacy Immigration and Naturalization

[5] Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, suggests that Congress did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation "is of little assistance here because, . . . this is not a case in which 'Congress re-enact[ed] a statute without change.'" *Public Citizen Inc. v. U.S.*

Service ("INS") regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a POE had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). For aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, "'[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while [aliens] who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). "To remedy this unintended and undesirable consequence, the IIRIRA substituted 'admission' for 'entry,' and replaced deportation and exclusion proceedings with the more general 'removal' proceeding." *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302.

Moreover, Congress's use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) is notable. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," 8 U.S.C. § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v.*

Dep't of Health and Human Servs., 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption "of congressional ratification" of a prior statutory interpretation "applies only when Congress reenacts a statute without relevant change." *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 349 (2005)).

Evanston Ins. Co., 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))). The present participle "expresses present action in relation to the time expressed by the finite verb in its clause," *Present Participle*, MerriamWebster, http://www.merriamwebster.com/dictionary/present%20participle (last visited Nov. 14, 2025), with the finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being "determines." Thus, when pursuant to 8 U.S.C. § 1225(b)(2)(A) an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. *See, e.g.*, *Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) ("USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . ."). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner in this case is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Fourth Circuit case law supports the Government's interpretation. Both *Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021), and *Santana v. Garland*, 92 F.4th

491, 497 (4th Cir. 2024) suggest that the phrases "applicant for admission" and "seeking admission" in 8 U.S.C. § 1225(b)(2)(A) are synonymous and interchangeable. In *Jimenez-Rodriguez,* after being placed in removal proceedings, Jimenez-Rodriguez applied for a U visa and sought a waiver of inadmissibility from USCIS, which was denied, and the immigration judge (IJ) thereafter ordered his removal. *Jimenez-Rodriguez,* 996 F.3d at 191. On review, the Fourth Circuit granted the petition and remanded, holding that DOJ regulations authorize the immigration judge to consider Jimenez-Rodriguez's request for an inadmissibility waiver under 8 U.S.C. § 1182(d)(3)(A)(ii). *Id.* In addressing the statutory scheme governing such individuals, the Fourth Circuit explained—albeit in a footnote—that noncitizens who have not been admitted and who are encountered at or near the border are treated as "applicants for admission," regardless of the precise terminology to describe their posture. *Id.* at 194, n.2. Here, the Fourth Circuit found that because Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone "seeking admission[.]" *Id.* The Court's analysis presupposed that an individual who is "seeking admission" necessarily falls within the statutory definition of an "applicant for admission," reflecting Congress's use of functionally equivalent language rather than distinct legal categories.

The Fourth Circuit reaffirmed that same understanding in *Santana v. Garland*, where Santana sought review of a BIA decision affirming an immigration judge's determination that she was ineligible for adjustment of status based on inadmissibility for falsely claiming U.S. citizenship. *Santana*, 92 F.4th at 493. Santana argued that the IJ and the BIA applied the wrong burden of proof and that her hearing was fundamentally unfair due to the admission of a Form I-9. *Id.* The Court rejected both arguments, analyzing the applicability of § 1225(b)(2)(A) by focusing on Santana's lack of lawful admission and continued attempt to enter and remain in the United States, rather than drawing any meaningful distinction between the terms "seeking

admission" and "applicant for admission." *Id.* at 497. Although the Supreme Court later vacated and remanded *Santana* on other grounds, *see* 145 S. Ct. 1042 (2025), the Fourth Circuit's statutory analysis remains instructive insofar as it treats "applicant for admission" and "seeking admission" as describing the same legal status under the INA.

Read together, *Jimenez-Rodriguez* and *Santana* confirm that the Fourth Circuit has consistently understood § 1225(b)(2)(A) to turn on whether a noncitizen has been lawfully admitted, and not on a semantic distinction between "seeking admission" and "applicant for admission." This approach supports the Government's interpretation that Congress intended those phrases to be equal for purposes of applying § 1225(b)(2)(A)'s mandatory detention framework. Treating the two terms as different would effectively rewrite the statute by adding an additional condition for mandatory detention that Congress never enacted. That expanded reading of the statute would distort the statute's intent by elevating linguistic nuance over the clear structural logic Congress embedded in § 1225(b).

Therefore, this Court should reject any attempt to manufacture a distinction where the statute recognizes none, and instead adhere to the INA's text, which treats "seeking admission" and "application for admission" as compatible descriptors of the same legal status. Doing so preserves Congress's intent for mandatory detention under § 1225(b) and avoids injecting unwarranted complexity into an otherwise straightforward statutory scheme. The Court should adopt the government's reasoning and find that Petitioner is correctly detained under § 1225 and not entitled to a bond hearing.

3. Section 1226 does not impact the detention authority for applicants for admission.

The Court should reject any argument that Section 1226 is the proper detention authority. Section 1226(a) is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226,

1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 proceedings under [8 U.S.C. § 1229a]," *id.* § 1225(b)(2)(A).[6] As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).[7]

Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)). However, in interpreting provisions of the

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[6] The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). "[I]t is a commonplace of statutory construction that the specific governs the general . . . ." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is "most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission" and in order to "eliminate the contradiction, the specific provision is construed as an exception to the general one"); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that "[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones"). Here, 8 U.S.C. § 1225(b)(2)(A) "does not negate [8 U.S.C. § 1226(a)] entirely," which still applies to admitted aliens who are deportable, "but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

[7] While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

INA, the Board does not view the language of statutory provisions in isolation but instead "interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole." *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text . . . ." *Id.*

Properly interpreted and applied, § 1225(b)(2)(A) operates according to lawful admission status, not physical location or passage of time, and does so without collapsing § 1226 into irrelevance. *Chen v. Almodovar* endorses this reading. No. 1:25-CV-8350-MKV, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025). In *Chen,* the Southern District of New York addressed whether a noncitizen who entered the United States without inspection and was later detained remained subject to detention under § 1225(b)(2)(A). 2025 WL 3484855, at *1. The court concluded that the petitioner—who had never been admitted—remained an "applicant for admission" and therefore fell within § 1225's detention framework. Critically, *Chen* did not hold that § 1226(c) lacks independent force. Instead, the court explained that § 1225 and § 1226 address different populations at different statutory stages. Section 1225 governs inspection and detention of noncitizens who remain applicants for admission, while § 1226 governs custody determinations for noncitizens who have been admitted, or who have lost lawful admission status. Applying § 1225(b)(2)(A) to applicants for admission therefore leaves meaningful work for § 1226(c)(1)(E), which, for example, mandates detention for specific categories of criminal noncitizens who fall

within § 1226's scope.[8] The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* 8 U.S.C. § 1226(c)(1)(E), merely reflects a "congressional effort to be doubly sure" that certain aliens are detained, *Barton*, 590 U.S. at 239.

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

Although the Government's arguments have yet to succeed in this district,[9] no binding precedent forecloses the government's argument and many district courts have adopted the Federal Respondents' and the BIA's interpretation.[10] Indeed, it is difficult to see how any Court could find

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[8] *See also Matter of Yajure Hurtado*, 29 I&N Dec. at 222 ("Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section . . . 1225(b)(1)), would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.'" (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)).

[9] *See, e.g.*, Order, *Duarte Alarcon v. Bondi*, 25-cv-3605 (D. Md. Dec. 18, 2025), at Doc. 25 *Velasquez v. Noem*, No. 1:25-cv-03215-GLR, 2025 WL 3003684, at *3 (D. Md. Oct. 27, 2025); *Maldonado v. Baker*, No. CV 25-3084-TDC, 2025 WL 2968042, at *6–7 (D. Md. Oct. 21, 2025).

[10] *See Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (containing a thorough statutory construction analysis). *See also, Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025); *Ba v. Dir. of Detroit Field Office*, No. 4:25-CV-02208, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025); *Jimenez v. Thompson*, No.

for Petitioner without deciding that the BIA – the subject matter expert in immigration regulations – got the issue flatly wrong in *Yajure Hurtado*, since the Petitioner's petition cannot be reconciled with the BIA's decision. *Accord Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (holding that agency decisions, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance"); *Martinez v. Holder*, 740 F.3d 902, 910 (4th Cir. 2014) (applying *Skidmore* to BIA decision, finding BIA erred).

Ultimately, as courts that have accepted the Government's argument have recognized, the Government is allowed to enforce existing laws more strictly when a new administration comes into office. *See Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wi. Dec. 8, 2025) ("Prior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it." (internal quotations omitted)). In enforcing a more lenient interpretation of § 1225, previous administrations acknowledged that "despite being applicants for admission, aliens who are present without having been . . . paroled . . . will be eligible for bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312,

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4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, -- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Chavez v. Dir. of Detroit Field Office*, No. 4:25-cv-2061, 2025 WL 3187080 (N.D. Ohio Nov. 14, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Mursalin v. Dedos, Warden*, No. 1:25-cv-00681, 2025 WL 3140824 (D.N.M. Nov. 10, 2025); *Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *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); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 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); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (explaining why decisions finding §§ 1225 and 1226 "mutually exclusive" are misguided); *Ba v. Dir. of Detroit Field Office*, No. 4:25-CV-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025), *reconsideration denied*, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025); *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). *Accord Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025).

10323 (Mar. 6, 1997). As the *Garibay-Robledo* court observed, "The clear implication of this language is that, despite possessing the authority to deny bond to broad classes of aliens, the government declined to exercise the full extent of its authority under the INA." *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482, at *4 (N.D. Tex. Oct. 24, 2025). The current Presidential administration has adopted a narrower view than previous administrations, but "[t]he fact that previous administrations did not seek to administer or enforce the laws Congress had enacted, however, does not change the meaning of those statutes." *Ugarte-Arenas*, 2025 WL 3524451 at *4.

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

C. Petitioner's Fourth Amendment Challenge is Improperly Raised via this Petition.

Petitioner's Fourth Amendment challenge to the reasonableness of his detention is without merit. *See* ECF 1 at ECF 4 at 7. This claim fails because the initial stop was based on reasonable suspicion and the arrest was based on probable cause that Petitioner was removable. *See* Ex. 1. *See also, Abel v. United States,* 362 U.S. 217, 230 (1960) ("[s]tatues authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time."); *Ryan v. U.S. Immigr. & Customs Enf't,* 974 F.3d 9, 19 (1st Cir. 2020) ("[t]he text of the INA confers broad authority upon ICE to conduct civil arrests."); *Perez-Ramirez v. Norwood,* 322 F. Supp. 3d 1169, 1172 (D. Kan. 2018) (denying habeas petition and finding no Fourth Amendment violation because "the legality of an arrest of an alien based upon a civil immigration violation is well-established."). Here, ICE officials conducted a traffic stop on Petitioner's vehicle near Kenilworth Avenue after running a records check on his license plate,

determining the car was registered in Petitioner's name, cross referencing the information with immigration records, and determining that Petitioner was an inadmissible alien from Peru present in the United States without any immigration documents.

Petitioner provides no allegations to support his claim of a Fourth Amendment violation and sets forth no caselaw to support the proposition that an order of release via a habeas petition would be the proper remedy for an alleged Fourth Amendment violation. District courts routinely hold that even assuming a Fourth Amendment violation occurred, a habeas action is not the proper means to seek a remedy and release is not an appropriate remedy because an individual's identity and their immigration status cannot be suppressed. *See e.g.*, *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (Explaining that "even if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Jorge S. v. Sec'y of Homeland Sec.*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332717, at *4 (D. Minn. Nov. 15, 2018), *report and recommendation adopted*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332507 (D. Minn. Dec. 4, 2018) ("Release from Jorge S.'s *current* detention because his detention *previously* had been unlawful would be a remedy ill-fitted to the specific injury alleged.") (emphasis in original); *Amezcua-Gonzalez v. Lobato*, No. C16-979-RAJ-JPD, 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016), *report and recommendation adopted sub nom. Amezcua–Gonzalez v. Lobato*, No. C16-979-RAJ, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016) (Finding that "even if petitioner's arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief, and his petition should be denied.").

Instead, any claim as to unreasonable arrest must be presented by Petitioner through a motion to suppress in Immigration Court, the BIA, and ultimately to a circuit court, but not a

district court. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51 (1984) (Explaining that motions to suppress may be available in immigration proceedings for "egregious violations of the Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained."). *See also Arias v. Rogers*, 676 F.2d 1139, 1143 (7th Cir. 1982) (No constitutional infirmity with immigration arrest because detainees could "could avail themselves of the administrative remedies" available to them to contest detention.); *Aguilar v. U.S. Immigr. & Customs Enf't Chicago Field Off.*, 346 F. Supp. 3d 1174, 1189 (N.D. Ill. 2018) (same).

D. Petitioner's APA Claim Lacks Merit

The Court must deny Petitioner's undeveloped and unsupported claim that Respondents have violated the APA by adopting an arbitrary and capricious policy of detaining noncitizens, such as Petitioner, and initiating removal proceedings without individualized consideration of their cases. *See* ECF 4 at 2; 5-6.

This claim is improperly raised in this habeas petition as it does not pertain to whether he currently "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Federal habeas corpus is a remedy available only to challenge the fact, duration, or legality of custody. *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (reaffirming that habeas is appropriate only for claims that would result in immediate or speedier release).

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) (cleaned up) (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.

Additionally, Petitioner has not established that the cited policy amounts to final agency action. *See* 5 U.S.C. § 704. "For an agency action to be reviewable under the APA, it must be 'final' action[.]" *Am. Assoc. of Univ. Profs. v. Rubio*, No. 25-cv-10685-WGY, 2025 WL 1235084, at *21 (D. Mass. Apr. 29, 2025). "To be final, agency action must be 'one by which rights and obligations have been determined' or from which 'legal consequences will flow.'" *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)). Petitioner has not, and cannot, sufficiently allege that the challenged policy is "the consummation of the agency's decision-making process." *Bennett*, 520 U.S. at 177-78. Nor can Petitioner allege a policy "by which rights and obligations have been determined' or from which 'legal consequences will flow." *Assoc. of Univ. Professors*, 2025 WL 1235084, at *21.

IV. CONCLUSION

For the foregoing reasons, the Motion and Petition should be dismissed for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief may be granted.

Dated: December 30, 2025

Respectfully submitted,

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