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

ZIYODBEK MUKHAMEDOV **PETITIONER**

VERSUS **CIVIL ACTION NO: 5:25-cv-00167-DCB-BWR**

RAPHAEL VEGARA, WARDEN OF THE ADAMS COUNTY CORRECTIONAL CENTER **RESPONDENT**

RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Ziyodbek Mukhamedov is a native and citizen of Uzbekistan who admitted that he entered the United States illegally without inspection in 2023.[1] The Petitioner was encountered by ICE on May 20, 2025. Mukhamedov has since been detained by immigration officials and placed in removal proceedings under 8 U.S.C. § 1229a before an immigration court. Those proceedings are ongoing.[2] The Petitioner had a bond hearing on June 30, 2025. The IJ issued an order finding that he no longer had jurisdiction to consider bond under a recent BIA decision, *Matter of Q. Li. See Exhibit A, Order of Immigration Judge, dated June 30, 2025.* The case was scheduled for a final hearing on removal to take place on August 22, 2025. However, on that day, jurisdiction of the case was transferred to Adams County. Another hearing was scheduled on October 31, 2025. *See Exhibit B, Order of Immigration Judge dated October 31, 2025.* At the final hearing on October 31, 2025, the IJ pretermitted the petitioner's application for relief based on lack of completeness and therefore ordered that Petitioner removed to

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[1] Petition [1] at 1.
[2] *Id.* at 9 (¶23). Mukhamedov has filed a timely appeal of the denial of bond due to a lack of jurisdiction (2025) and the asylum application (2023). *Id.* At 8-9 (¶ ¶22-23).

Uzbekistan. The case is currently on appeal with the BIA, thus there is no final order of removal. Based on a plain reading of the applicable statutes, Mukhamedov is deemed an "applicant for admission,"[3] and detention is mandatory for the duration of his removal proceedings.[4]

Mukhamedov filed the instant Petition under 28 U.S.C. § 2241 challenging his detention during the removal proceedings and arguing that he should be granted a bond hearing. His Petition should be denied and dismissed for several reasons. Mukhamedov's claim that he is entitled to be released or to a bond hearing wholly lacks merit and is contrary to law. Thus, his claims should be dismissed.

LEGAL FRAMEWORK

The Immigration and Nationality Act ("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.

Before 1996, the INA required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings.[5] 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

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[3] 8 U.S.C. § 1225(a)(1).

[4] 8 U.S.C. § 1225(b)(2)(A).

[5] 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); *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)).

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.

Among other things, that 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 v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020).

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 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. It provides that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed… an applicant for admission":

> 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). "All aliens . . .who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks (expedited removal and 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 so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those 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 these aliens, 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 processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is 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). It requires that those aliens be detained 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)[6]; *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 Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants Department of Homeland Security ("DHS") discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole . . . been served," the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Section 1226: 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.

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[6] Subsection (b)(2) does not apply to (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).

This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. 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." § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.*[7] Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal proceedings (i.e. the determination of whether the alien is to be removed from the United States), encompassing aliens who have committed certain criminal acts or acts of terror.

Section 1225(a) specifically provides that any "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Because Mukhamedov entered the country without inspection, he was never "admitted" and thus remains an "applicant for admission." Mukhamedov does not contest this point.

ARGUMENT

I. Mukhamedov failed to exhaust his administrative remedies prior to filing his Petition.

A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same);

[7] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992) (same); *accord Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists."). 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." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.). Because Mukhamedov does not have a final administrative order from the BIA, his Petition should be dismissed for lack of administrative exhaustion.

II. Mukhamedov's claim that he is entitled to be released or to a bond hearing lacks merit.

A. Section 1252(g) bars review of Petitioner's claim[s].

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. Detention unquestionably "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien

for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'"). As such, judicial review of the Petitioner's claim[s] is barred by § 1252(g).

Lack of a final decision equally bars Mukhamedov's vague Administrative Procedure Act ("APA") claim referenced in Count 1 and his prayer for relief. Petition [1] at 9-10. A final agency action is required for APA review. 5 U.S.C. § 706. An action is "final" when it (1) "mark[s] the consummation of the agency's decision-making process," and (2) is one "from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted). "Final agency action 'is a term of art that does not include all [agency] conduct such as, for example, constructing a building, operating a program, or performing a contract,' but instead refers to an 'agency's [final] determination of rights and obligations whether by rule, order, license, sanction, relief, or similar action.' " *Nat'l Veterans Legal Servs. Program v. United States DOD*, 990 F.3d 834, 839 (4th Cir. 2021) *quoting Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013) (*citing Bennett*, 520 U.S. at 177-78). A challenged action fails the first prong if it is "of a merely tentative or interlocutory nature" and does not express an agency's

"unequivocal position." *Holistic Candlers and Consumer's Ass'n v. FDA*, 664 F.3d 940, 943 (D.C. Cir. 2012) (citations omitted). A non-final action contemplates further administrative consideration or modification prior to the agency's adjudication of rights or imposition of obligations. *See id.* at 945.

Petitioner challenges his detention by ICE, which is not a final agency action that is reviewable by this Court under the APA. Instead, the challenge is squarely barred by 8 U.S.C. § 1252(g)—as the Supreme Court held in *AADC*. Congress provided that "no court" has jurisdiction over any cause or claim "arising from the decision or action . . . to commence proceedings, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno*, 525 U.S. at 482. In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

The Supreme Court has held that a prior version of § 1252(g) barred claims like those brought here. *See AADC*, 525 U.S. at 487-92. In a case in which aliens alleged that the "INS was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights," *id.* at 473-74, and the Government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action," *id.* at 488 n.10, the Supreme Court nonetheless held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)," *id.* at 487*; see Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020). *AADC* confirms that an alien cannot

avoid the reach of §1252(g) by alleging continued detention while executing a removal order in violation of his constitutional rights. *See, e.g., AADC*, 525 U.S. at 487-92; *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999).

B. Section 1252(b)(9) bars review of the petition.

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); *AADC.*, 525 U.S. at 483. 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. 525 U.S. 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)).

Section 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); *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, "[§] 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, § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

Here, Mukhamedov challenges the action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

C. Petitioner is properly detained under 8 U.S.C. §1225(b)(2) and is not entitled to release.

Mukhamedov asserts that he is not properly detained under INA § 235(b), 8 U.S.C. § 1225(b). This argument lacks merit.

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, Mukhamedov 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 ICE.

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)[8]. 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

[8] Section 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as "seeking an admission" and includes an alien "attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer.*" *See* 8 U.S.C. § 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a unambiguous statutory intent that aliens present in the United States without inspection are considered to be "seeking admission."

element of "lawful entry" is important here 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).

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 § 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 § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out. *See Dep't of Homeland Security*

v. Thuraissigiam, 591 U.S. 103, 108–09 (2020) (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").

The court should find that Mukhamedov is still "seeking admission" to the United States. He has not agreed to immediately depart, and he is seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). Moreover, treating him as if he is no longer "seeking admission" would reward him for violating the law, provide him with better treatment than a foreign national who lawfully presented himself for inspection at a port of entry, and encourage others to enter unlawfully, defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location").

Finally, § 1225 provides that Mukhamedov "***shall be detained*** for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Mukhamedov is not in expedited removal. He has instead been placed in full removal proceedings where he will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. Therefore, he also meets this textual element of § 1225(b)(2)(A) because he is in 1229a removal proceedings and is subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Mukhamedov. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g.*, *Jay v. Boyd*, 351 U.S. 345,

357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case, and the court should conclude that Petitioner's detention under § 1225(b)(2) is lawful.

D. Section 1226, not § 1225, applies to Mukhamedov's detention.

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). Mukhamedov "provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA [8 U.S.C. § 1226(a)]." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.

The argument that DHS's interpretation of § 1225 "defies the INA"[9] is incorrect. The crux of this dispute is one of statutory interpretation. Section 1225(b) provides for mandatory detention of any alien "who is an applicant for admission." And "applicants for admission" specifically

[9] Petition [1] at p. 6-7(¶ 26).

includes all aliens present in the United States who have not been admitted or who arrive in the United States. 8 U.S.C. § 1225(a)(1). Accordingly, whether an alien is inside the U.S. at the time of encounter with an ICE official does not matter if that alien entered at an unknown location, successfully evaded U.S. Border Patrol for some unknown amount of time and effected an unlawful entry into the interior of the United States. He remains an "applicant for admission" subject to mandatory detention once apprehended unless paroled by DHS in its sole discretion.

Section 1225 prescribes the specific procedures for inspection by the immigration officers to determine whether to admit or remove applicants for admission (whether under § 1229a proceedings or by expedited removal) and requires mandatory detention during that process. Conversely, § 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). Therefore, § 1226 does not exclude applicants for admission and authorizes arrest, revocation of bond and parole, and detention. Nor does § 1226 permit discretionary detention or bond for those aliens who are also "applicants for admission" under § 1225(a) because that would be inconsistent with the statutory intent to detain aliens who are applicants for admission on a non-discretionary basis as set forth in §§ 1225(b)(1)(B)(iii)(IV) and (b)(2)(A).

As explained above, 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 State*s, 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.

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., Valencia v. Chestnut, et. al.*, 2025 WL 3205133 (E.D. Calif. Nov. 17, 2025)(denying TRO, explaining the statutory text of 1225(b)(2) applies for mandatory detention) ("The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, ***but courts both in this circuit and elsewhere have recognized that the term also functions as a legal designation —describing an individual's legal status for purposes of the statutory removal scheme*** -- rather than a description of present conduct.") (emphasis added); *Alonzo v. Noem, et. al.*, 2025 WL 3208284 (E.D. Calif. November 17, 2025) (The reasonableness of [the Government's] argument is supported by the statutory language."); *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (denying habeas petition and finding 1225(b)(2) required mandatory detention); *Oliveria v. Patterson, et al*, 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.*, 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); *Lopez v. Trump, et. al.*, 2025 WL 2780351 (D. Neb. Sep. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on § 1225(b)(2)) (petition "an alien within the 'catchall' scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a."); *Mukhamedov v. Noem, et. al.,* 2025 WL 2730228 (S.D. Calif. Sep. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde,* 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States. 8 U.S.C. § 1225(b)(2)(A)).[10]

Mukhamedov appears to argue that the plain language of § 1225(b)(2) does not matter because the government has in the past treated certain aliens who enter without inspection and are arrested in the interior as subject to discretionary detention under § 1226(a). But this prior practice has no bearing on the legal issues here, as detention is mandated by the plain language of the statute, and 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).

A district court in this Circuit recently denied an injunction and request for a bond hearing under § 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.

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[10] This list is not exhaustive and new cases are being reported as of this filing. At the time of this filing other cases include: *Altamirano Ramos v. Lyons*, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Cirrus Rojas v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025).

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.

This Court should follow the reasoning of the *Oliveira, Barrios Sandoval, Garibay-Robledo* and other cases cited above to find that The 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.

E. Mukhamedov's detention does not violate due process under the Fifth or Fourth Amendment.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Mukhamedov. See 8 U.S.C. § 1225(a)(1). And Congress directed that aliens like Mukhamedov 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. Making such a judgment is the prerogative of the legislative branch serving the interest of the government and the United States.

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

In another immigration context involving aliens already ordered removed and awaiting their removal, the Supreme Court has explained that detention of 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, which stated "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 in detail why the *Zadvydas* opinion does not

provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

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

Likewise, Mukhamedov 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. His detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal proceedings. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court, while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302. Moreover, as another court in this Circuit has noted, even lengthy detention is mandatory and lawful under § 1225(b). *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at *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).

In *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. 538 U.S. at 522. Nor did he argue that he was not "deportable" within the meaning of § 1226(c). *Id.* Rather, he 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. *Id.* at 522-23. The Supreme Court rejected this argument. *Id.* at 531. Mukhamedov likewise argues that he should not be detained during the pendency of his removal proceedings. Congress, however, made the decision to detain him during the removal proceedings, which is a "constitutionally permissible part of [the removal] process." *Id.*

F. This Court lacks jurisdiction to grant declaratory relief.

In his prayer for relief, Mukhamedov asks this Court to make the following declarations: (1) that Petitioner's detention violates the INA, specifically 8 U.S.C. § 1226, and (2) that Petitioner's detention violates the Due Process Clause of the Fifth Amendment. Petition [1] at p. 29 (Subsections §§1 and 2). The Petition makes no mention of the authority under which the Court can grant such relief. As set forth above, however, the INA specifically precludes judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). Therefore, to the extent Petitioner seeks declaratory relief under this statute, this Court lacks subject matter jurisdiction to grant it.

Mukhamedov's challenge to his detention by ICE is squarely barred by 8 U.S.C. § 1252(g) as the Supreme Court held in a remarkably similar case. Section 1252(g) provides that "no court" has jurisdiction 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,"

"notwithstanding any other provision of law (statutory or nonstatutory)." By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. AADC*, 525 U.S. 471, 482 (1999). In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, and the adjudication of his immigration proceedings is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

III. The Petitioner is not entitled to EAJA fees.

Petitioner asks this Court to provide "access to counsel." To the extent this is a request for EAJA fees, Petitioner is not entitled to such relief in this matter. "EAJA is a limited waiver of sovereign immunity allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th at 784 (citing *Ardestani v. I.N.S.*, 529 U.S. 129, 137 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. *Id.* Therefore, regardless of the resolution of Petitioner's substantive claims, the Court should reject his request for EAJA fees.

CONCLUSION

For the reasons stated above, Mukhamedov's Petition should be denied and dismissed.

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Respectfully submitted,

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