UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBERTO MANDIQUE MEJIAS,

Petitioner,

v. Case No. 25-cv-1998

DALE J. SCHMIDT,

Respondent.

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

In accordance with the Court's order dated January 7, 2026 (ECF 13), the United States and Respondent Dale Schmidt, through the undersigned counsel, hereby answer the Amended Petition for Writ of Habeas Corpus (ECF 11) ("Petition") filed by Petitioner Roberto Mandique Mejias.[1]

INTRODUCTION

Petitioner is a citizen of Venezuela who has never been legally admitted to the United States but has lived here for about four years. The Department of Homeland Security (DHS) arrested Petitioner and, currently, he is detained at the Dodge County Jail in Juneau, Wisconsin. He is currently subject to removal proceedings, having entered the

[1] In its screening order, the Court dismissed the federal respondents named in Petitioner's original petition (ECF 13); however the United States, being responsible for Petitioner's detention, submits this response to the petition jointly with Respondent Schmidt, the sheriff of the Dodge County Jail.

United States without inspection and without being in possession of a valid travel document. (ECF 12-13, at p. 5).

Petitioner has not been released on conditional parole or bond since being placed into removal proceedings.[2] He now seeks habeas relief from detention, alleging that two mandatory detention statutes relied upon by the Government are inapplicable to his situation. First, he alleges that he cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1) (which applies to expedited removal proceedings), since the Government failed to served him with documentation that would indicate his placement into expedited removal proceedings when first encountered at the southern border in 2021. (ECF 11, at ¶¶ 59, 61.) Second, he alleges that 8 U.S.C. § 1225(b)(2)—which also provides for mandatory detention—is inapplicable to foreign nationals who entered the United States without inspection and resided in this country for a period. (*Id.* at ¶ 68.) Instead, Petitioner alleges that 8 U.S.C. § 1226(a), which generally entitles a foreign national to a bond hearing at the outset of their detention, is applicable. (*Id.*)

The facts, however, does not support Petitioner's claim. As shown in the accompanying documents, Petitioner was processed for expedited removal shortly after his arrival in the United States. *See* Declaration of Vanessa Palma ("Palma Decl."), Ex. A. Therefore, Petitioner remains properly detained under 8 U.S.C. § 1225(b)(1). In addition,

[2] As referenced in the complaint, a bond redetermination was requested prior to Petitioner being served with a Notice to Appear (ECF 11. at ¶¶ 56-57.) This resulted in an immigration judge granting a bond of $7,500. (ECF 12-10.) The acceptance of this bond and release of Petitioner has been stayed pending DHS's administrative appeal of the immigration judge's exercise of jurisdiction to enter such an order. (ECF 2-11.)

he is also subject to mandatory detention under subsection 1225(a)(1) as he was never lawfully admitted into the United States, and therefore meets the Immigration and Nationality Act's (INA) unambiguous definition of an "applicant for admission." 8 U.S.C. § 1225(a)(1). Accordingly, his detention is also mandatory under 8 U.S.C. § 1225(b)(2)(A).

For these reasons, Respondents respectfully ask that the Court deny the Petition and dismiss this action with prejudice.

BACKGROUND

I. Factual and Procedural Background

Petitioner is a citizen of Venezuela who was first encountered by immigration authorities after unlawfully crossing the southern border on or about October 14, 2021. (ECF 12-9.) As is the established procedure following such encounters, Government records indicate that Petitioner was processed for expedited removal (Palma Decl., Ex. A). During this process, Petitioner indicated a fear of harm if he returned to Venezuela. (*Id.* at pp. 6-7.)

According to the administrative record, it is at this point Petitioner's immigration history takes an unusual turn. For reasons unknown, rather than immediately being detained and referred for a credible fear interview by an asylum officer, which is part of the expedited removal process, Petitioner was instead released on recognizance ("ROR") as an alternative to detention ("ATD").[3] (ECF 12-2.)

[3] Among the conditions placed on Petitioner's release was that he "not violate any local, State or Federal laws or ordinances." (*Id.* at p. 1.) This condition was violated when, on June 5, 2023, Petitioner was arrested and cited for Operating While Intoxicated (1st) and Operating with Prohibited Alcohol

At some point within one-year of Petitioner's arrival in the United States, he filed an Application for Asylum with USCIS. (ECF 11, at ¶ 54.) However, in a letter dated June 13, 2025, the agency informed him that it lacked jurisdiction to adjudicate the application due to Petitioner's prior placement into expedited removal proceedings. (ECF 12-5.) On November 3, 2025, ICE officers arrested Petitioner during a required in-person check-in at the agency's Milwaukee Field Office before being taken to Dodge County Jail in Juneau, Wisconsin, where he remains detained.

Following a request by Petitioner, on November 17, 2025, an Immigration Judge ordered that he be released with a $7,500 bond. (ECF 12-10.) However, his release from custody has been stayed pending an administrative appeal by the government. (ECF 12-11; Palma Decl. at ¶ 7.) On or about December 10, 2025, Petitioner completed a credible fear screening interview with an asylum officer, and a positive screening decision was issued on December 12, 2025. (Palma Decl. at ¶ 6.) The government then initiated full removal proceedings under 8 U.S.C. § 1229 when Petitioner was served with a Notice to Appear ("NTA") on December 27, 2025. (*Id.* at ¶ 8.) These removal proceedings remain pending before the immigration court, with Petitioner intending to seek relief from removal through relief in the form of his asylum and withholding of removal claims. (ECF 11, at ¶ 64.)

II. Legal Background

All foreign nationals seeking admission into the United States must be inspected

Concentration (1st) following an incident in which he struck a private residence and narrowly avoided a parked vehicle at around 4am. (ECF 3-1.)

by immigration officials. 8 U.S.C. § 1225(a)(3). Foreign nationals who are "present in the United States without being admitted or paroled" are deemed "inadmissible" and subject to removal from the country. 8 U.S.C. § 1182(a)(6)(A)(i). Immigration officials are authorized to arrest foreign nationals who are in the country illegally and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *see also Denmore v. Kim*, 538 U.S. 510, 523 (2003) (explaining that detention during removal proceedings "is a constitutionally valid aspect of the process").

Congress has enacted a statutory framework for the civil detention of foreign nationals during the administrative removal process under the INA. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The INA establishes rules governing when certain foreign nationals may be detained or removed, with different detention provisions applying to different categories of foreign nationals. *See id.*

a. Expedited Removal

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), replacing much of the INA with a new and "comprehensive scheme for determining the classification of . . . aliens," *Camins v. Gonzales*, 500 F.3d 872, 879 (9th Cir. 2007) These legislative reforms included including expedited removal. This legislation included the statutory enactment of expedited removal proceedings, which ensures that the Executive Branch can both "expedite removal of aliens lacking a legal basis to remain in the United States," *Kucana v. Holder*,

558 U.S. 233, 249 (2010); *see also* S. Rep. No. 104-249 (1996), and deter individuals from exposing themselves to the dangers associated with illegal immigration, H.R. Rep. No. 104-469, pt. 1, at 117 (1996). "Hence, the pivotal factor in determining" what sort of proceeding a foreign national is entitled to "will be whether or not the alien has been lawfully admitted." *Id.* at 225. Congress thus conferred sizable authority to Executive Branch officers while limiting judicial review to "expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his . . . claim promptly assessed[.]" H.R. Rep. No. 104-828, at 209–10 (1996).

Two groups of foreign nationals are subject to expedited removal: (1) those arriving in the United States, 8 U.S.C. § 1225(b)(1)(A)(i), and (2) those designated by the Secretary of Homeland Security within certain outer statutory limits, *id.* ("an alien . . . described in clause (iii)"). *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii). The statute limits designation of the latter group as follows:

> An alien . . . who has not been admitted or paroled into the United States, and who has 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 under this subparagraph.

8 U.S.C. § 1225(b)(1)(A)(iii)(II). Thus, foreign nationals in either the first group (arriving aliens) or second group (designated aliens) can be removed through expedited removal if they are removable on either of two grounds of inadmissibility, namely, on the basis of fraud, 8 U.S.C. § 1182(a)(6)(C), or a lack of documents, 8 U.S.C § 1182(a)(7). 8 U.S.C. §

1225(b)(1)(A)(i).

b. Applicants for Admission

The detention and removal of "applicants for admission" is governed by 8 U.S.C. § 1225. This section defines an "applicant for admission" as any "alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* at § 1101(a)(13)(A). To have been "admitted" to the United States therefore requires that the foreign national must have lawfully entered the country "after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). An "applicant for admission" under 8 U.S.C. § 1225 is therefore a foreign national who either is either present in the United States who has not lawfully entered the country or one who is arriving. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a foreign national "who tries to enter the country illegally is treated as an 'applicant for admission'"). As explained by 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

The Supreme Court has explained that "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens who are "determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation," while section 1225(b)(2) "is broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Ibid.*

With respect to applicants for admission subject to 8 U.S.C. § 1225(b)(2)'s catchall provision, if an immigration officer determines that they are "not clearly and beyond a doubt entitled to be admitted" then they "shall be detained" during removal proceedings. 8 U.S.C. § 1225(b)(2)(A). None of the provisions of 8 U.S.C. § 1225 provide a bond process whereby applicants for admission may be released pending resolution of their removal proceedings, so detention is mandatory. *See Jennings*, 583 U.S. at 302 ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

c. Other Removable Foreign Nationals

The INA also provides procedures for the arrest, detention, and removal of foreign nationals who do not meet the criteria of an "applicant for admission." Section 1226 is not limited to applicants for admission, but instead, broadly applies to foreign nationals who have been admitted but are now pending removal decisions (*e.g.*, tourists or students who have overstayed a visa, lawful permanent residents who have committed certain crimes, foreign nationals who are alleged to have obtained travel documents through fraud, etc.). *See* 8 U.S.C. § 1226.

Section 1226 also provides procedures for the detention of foreign nationals. *Id.* However, immigration officials are expressly authorized to release them on bond pending the adjudication of their removal proceedings. 8 U.S.C. § 1226(a)(2)(A). DHS regulations provide for the bonded release of foreign nationals falling under this provision if they "would not pose a danger to property or persons" and are "likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

In sum, Section 1225(b) governs the detention of "applicants for admission"—which Congress has defined to include any foreign national "present in the United States who has not been admitted"—while Section 1226(a) governs the detention of foreign nationals who have been previously admitted but are subject to removal proceedings. Section 1225(b) does not provide for release on bond during the removal process, while Section 1226(a) does.

LEGAL STANDARD

A petition for a writ of habeas corpus challenges the legality or constitutionality of the Government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. A petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 268 (1941).

When reviewing a habeas petition, the court may consider affidavits and documentary evidence, such as records from any underlying proceeding. *Amponsah v. Beth*, No. 18-cv-199, 2018 WL 2944546, at *2 (E.D. Wis. June 12, 2018) (citing 28 U.S.C. §§ 2246, 2247). The court is not required to hold an evidentiary hearing when the petition and answer present only issues of law. *Toe v. Schmidt*, No. 24-cv-13, 2024 WL 493289, at *2 (E.D. Wis. Jan. 18, 2024) (citing 28 U.S.C. § 2243).

ARGUMENT

The evidentiary record supports a finding that Petitioner was properly placed in expedited removal proceedings after his unlawful entry at the southern United States' border in 2021. Despite the procedural anomalies that are presented in his immigration

history, Petitioner nevertheless remained subject to expedited removal until being issued with an Notice To Appear following a positive credible fear screening with an asylum officer on December 12, 2025 in full accordance with 8 U.S.C. § 1225(b)(1)(B)(ii) and 8 C.F.R. § 208.30(f). As such, Petitioner is being detained under the authority set forth in 8 U.S.C. § 1225(b)(1) and is therefore not entitled to a bond hearing.

If the court were to find that Petitioner is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1), Petitioner's detention is nonetheless proper under 8 U.S.C. § 1225(b)(2)(A). The plain text of the INA states that a foreign national in the United States is an "applicant for admission" until they are admitted into the United States by an immigration officer. 8 U.S.C. § 1225(a)(1). Section 1225 is the statutory provision that governs the processes for arresting, detaining, and removing applicants for admission. And the statute says that an "applicant for admission ... shall be detained" pending removal proceedings "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Nowhere in his Petition does Petitioner allege he has ever been lawfully admitted into the United States. Indeed, Petitioner acknowledges that he lacks any legal status in the United States. And Petitioner is obviously present in the United States, as he was arrested by immigration officers in Milwaukee, Wisconsin and he is currently seeking relief from removal through the filing of an application for asylum. Thus, Petitioner is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner asserts, however, that 8 U.S.C. § 1225 applies to people arriving at U.S. borders and ports of entry. If this is correct, an undocumented immigrant who evades detection upon arrival in the United States and travels into the interior of the country is no longer an "applicant for admission" subject to mandatory detention. But the statute defines that term to include any foreign national "present in the United States who has not been admitted or who arrives in the United States," with no temporal or geographic limitations. 8 U.S.C. § 1225(a)(1) (emphasis added). While judges in this district have split on their interpretations of the applicability of Sections 1225 and 1226 to unadmitted foreign nationals present in the United States, *see infra*, the statutory text and the legislative history support only one interpretation of the INA.

I. No Violation of the INA

a. Detention Authority Under 8 U.S.C. § 1225(b)(1)

The issue of whether an alien initially placed in expedited removal proceedings but later referred for full removal proceedings following a positive credible fear screening is subject to mandatory detention was directly addressed by the Attorney General Opinion issued in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). This decision found that 8 U.S.C. § 1225 "expressly provides for the detention of aliens originally placed in expedited removal." *Id*, at 512. In making this finding, the Attorney General Opinion relied on the plain language of 8 U.S.C. § 1225(b)(1)(B)(ii), which provides that such individuals "shall be detained for further consideration of the application for asylum." *Id.*

Petitioner was apprehended at the southern border on or about October 14, 2021. (ECF 12-9.) In his complaint, Petitioner points to documentation he was provided following this encounter that include apparent references to the exercise of authority under 8 U.S.C. § 1226 on certain documents. (ECF 11, at ¶ 60.) However, Petitioner's own evidentiary filings in this matter reveal a trail of documents that lead to a contrary conclusion; namely that he was being processed for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). First, he provides a copy of the Form I-213 that was created at the time of his initial encounter at the border and lists as a disposition of "[s]ubject was processed as an Expedited Removal..." (ECF 12-9, at p. 2.) Petitioner also provides Notices of Dismissal of Form I-589 in which he is informed of USCIS's stated position that it is unable to assert jurisdiction over Petitioner's asylum claim due to him being in pending expedited removal proceedings. (ECF 12-5; ECF 12-6.)

As such, it is fair to characterize Petitioner's release from custody for a period of four years, instead of immediately referring him for a credible fear screening, as being inconsistent with established procedural norms.[4] Petitioner correctly identifies these anomalies in his complaint. (ECF 11, at ¶¶ 56-58.) However, Petitioner fails to cite any

[4] The precise rationale for such a puzzling series of events is admittedly unclear but may be explained at least in part simply by the high volume of encounters that took place along the southern border as well as the widespread Coronavirus pandemic during this time period. *See U.S. Customs and Border Protection, Southwest Land Border Encounters (by Component) FY 2022*, available at https://www.cbp.gov/newsroom/ stats/southwest-land-border-encounters-by-component-fy22 (reporting more than 2 million enforcement encounters along the southern border during FY 2022, including 468,124 in the Del Rio sector of Texas where Petitioner was apprehended); ECF 12-4 (showing an assessment that a chronic health condition placed him "at heightened risk of severe illness or death upon contracting the COVID 19 virus").

persuasive authority that these events alone are sufficient to invalidate or reverse his initial placement in expedited removal proceedings.[5]

Thus, the evidentiary record as well as the applicable statutory and regulatory scheme support a finding that immigration officials placed Petitioner into expedited removal proceedings following his initial entry to the United States in 2021. The record reveals the timely preparation of Form I-860 Notice and Order of Expedited Removal and Forms I-867A and I-876B Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. (Expedited Removal Documents, attached hereto as Ex. B.) Each of these forms is dated October 16, 2021 – well within the two-year timeframe set forth in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) – and contains what appears to be a signature of acknowledgement from Petitioner. (*Id.*) It is also worth noting that the continuation of expedited removal proceedings is cited in official correspondence from USCIS dated as recently as October 31, 2025. (ECF 12-6.)

These records, in addition to the fact that Petitioner was only served with a Notice to Appear *after* he established a credible fear, further indicate both his initial and ongoing placement in expedited removal proceedings during the relevant time. As such, Respondent asks that the court adopt the reasoning set forth by the BIA in *Matter of M-S-* in its consideration of the present petition.

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[5] Petitioner points to the lack of any statutory procedure or regulation that expressly provides for the elongated timeframe presented in this matter. (ECF 11, at ¶ 32.) However, the regulation providing for this procedure is silent as to any maximum timeframe in which it must be accomplished. 8 C.F.R. § 208.30(b). It is also worth noting that USCIS

b. Statutory Text of 8 U.S.C. § 1225(b)(2)(A)

Both the plain text of the INA and its legislative history supports the Government's interpretation of the mandatory detention statute. The statutory text defines foreign nationals who have not been admitted to the United States, but who are physically present inside the United States, as "applicants for admission," 8 U.S.C. § 1225(a)(1), regardless of extraneous factors such as proximity to the border, length of time present, or subjective intent to apply for admission. And it mandates that applicants for admission "shall be detained" pending removal proceedings (without the potential for release on bond) if an immigration officer determines that the applicant "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

For a foreign national to be "admitted" into the United States, he or she must have lawfully entered the country "after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Here, it is undisputed that Petitioner has never been inspected or authorized by an immigration officer and, therefore, has not been "admitted" into the United States. As a result, Petitioner's presence in the United States as an unadmitted foreign national makes him an "applicant for admission" subject to Section 1225. Moreover, Petitioner undoubtedly wishes to remain in the United States, as he has filed an application for asylum and withholding of removal, so he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). The immigration court will hold a hearing on Petitioner's application, at which Petitioner will presumably argue that he should be granted lawful admission status in the United States. Under any

definition of the phrase, Petitioner is "an alien seeking admission" to the United States and subject to § 1225(b)(2)(A).

Petitioner points to prior agency practice of applying § 1226(a) to foreign nationals like himself but that argument is unpersuasive. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of the statute and *not* prior practice controls. *cf. Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. *Loper Bright* recognized that agencies often change precedents and "correct [their] own mistakes." 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). This is precisely what DHS did when it modified its detention policy to conform to the plain language and intent of § 1225(b)(2)(A).

c. Legislative History

Given that the statutory text is clear, the Court need not consider legislative history, but that history only further supports the Government's position. *See Mohamad v. Palestinian Authority*, 566 U.S. 449, 459 (2012) ("Indeed, although we need not rely on legislative history given the text's clarity, we note that the history only supports our interpretation… ."). Congress enacted both 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a) as part of the IIRIRA in 1996. Before passage of that Act, the INA only provided for inspection of foreign nationals when they arrived at ports of entry. *See* former 8 U.S.C. § 1225(a) (1994). If, after inspection, immigration officers at a port of entry determined the foreign national was inadmissible, they would be placed into "exclusion" proceedings and were subject to mandatory detention. *See* former 8 U.S.C. § 1182(d)(5) (1994). By contrast, under this former statutory regime, foreign nationals who entered the United

States illegally and were later discovered were placed into "deportation" proceedings and were eligible to request release on bond. *See* former 8 U.S.C. § 1252(a)(1) (1994).

This structure led to an incongruous result: foreign nationals who had lawfully appeared at a port of entry for inspection but were deemed inadmissible were ineligible for release on bond, while those who surreptitiously entered the country without inspection were entitled to request release on bond. *See Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 2025 WL 2674169, at *6–8 (BIA Sept. 5, 2025) (discussing statutory history); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010) ("This so-called 'entry doctrine' resulted in an anomaly. Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings."); *Chavez*, 2025 WL 2730228, at *4 ("Prior to IIRIRA, an 'anomaly' existed 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.") (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

Congress found this unintended and undesirable result to be unacceptable. It chose to amend the INA through the IIRIRA to replace the previous term "entry" with the term "admission" and to replace the former "exclusion" and "deportation" proceedings with more general "removal" proceedings. *See Martinez v. Att'y Gen. of the U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). The House Report on the IIRIRA explained Congress's logic as follows:

> This subsection is intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469(I), 1996 WL 168995, at 225 (Leg. Hist. Mar. 4, 1996).

In essence, Petitioner's attempt to graft geographic and/or temporal limitations onto the definition of "applicants for admission" provided in 8 U.S.C. § 1225(a)(1) seeks to override Congress's deliberate legislative choice in passing the IIRIRA and restore the former immigration regime that Congress determined was unacceptable. *Cf. Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (explaining that Congress's addition of 8 U.S.C. § 1225(a)(1) "ensures that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission'"). As shown in this case, Petitioner's interpretation would afford foreign nationals who illegally enter the country and evade detection by immigration officers greater procedural protections than those available to foreign nationals who lawfully present themselves for inspection at a port of entry. Yet the plain text of the statute and its legislative history fails to support this inharmonious result.

d. This Court's Recent Decisions

This Court recently addressed a substantively identical case in *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), *appeal filed*, Nov. 25, 2025, which should be followed here. Like this case, the petitioner in *Cirrus Rojas* was "an

unregistered alien and citizen of Mexico who has lived in the United States without authorization for [a number] of years." *Id.* at *1. The petitioner in *Cirrus Rojas* was arrested pursuant to an administrative arrest warrant this past summer, placed into removal proceedings, and ordered released on bond by an immigration judge. DHS appealed the release order, triggering the automatic stay of 8 C.F.R. § 1003.19(i)(2). *Id.* The petitioner in *Cirrus Rojas* then filed a habeas petition, arguing that his detention pending his removal proceedings was governed by 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225 and, thus, the immigration judge's bond order was proper under 8 U.S.C. § 1226(a)(2). *Id.* at *7.

This Court conducted a thorough analysis of the text of 8 U.S.C. § 1225 and 8 U.S.C. § 1226, walking through the various provisions of the respective statutes. *Id.* at *5–10. While the Court acknowledged that "the statutory language and interplay between [Section 1225 and Section 1226] could certainly be more clear," it concluded "[b]ased on the text" that the respondents' position was correct and held that 8 U.S.C. § 1225(b)(2)(A) applies to unadmitted foreign nationals found inside the United States and mandates their detention throughout the pendency of removal proceedings. *Id.* at *8. After carefully reviewing the language of 8 U.S.C. § 1225(a)(1) and considering the INA as a whole, this Court determined that it could "not find a statutory basis to exclude [the petitioner] from the definition of 'applicant for admission' in Section 1225(a)(1)." *Id. See also Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (following *Cirrus Rojas* and ruling that petitioner was "applicant for admission" under Section 1225 where petitioner had lived in United States without authorization for several years).

Finally, this Court rejected the argument that the historical practice of federal immigration agencies permitting unadmitted foreign nationals living in the United States to seek release on bond under 8 U.S.C. § 1226(a)(2) should override the plain text of 8 U.S.C. § 1225. *See Cirrus Rojas*, 2025 WL 3033967, at *9. As this Court noted, "[p]rior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it." *Id.* The Supreme Court has recently explained that while "the longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is… the interpretation of the meaning of statutes, as applied to justiciable controversies, [i]s exclusively a judicial function." *Loper Bright*, 603 U.S. at 386–87 (internal punctuation and citations omitted).[6]

Respondents acknowledge that several federal district courts have addressed this same issue recently and reached the opposite conclusion—that 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225 governs the detention of unadmitted foreign nationals living in the United States. This Court recently so held in *Ramirez Valverde v. Olson*, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025) (Conway, J.), *appeal filed,* Dec. 22, 2025, *Rivas-Alonso v. Olson*, 2025 WL 3240928 (E.D. Wis. Nov. 20, 2025)(Adelman, J.), and *Lopez De La Cruz v. Schmidt*, Case No. 25-cv-1562, at Doc. 18 (E.D. Wis. Nov. 19, 2025)(Adelman, J.) Respectfully, the United

[6] Cases from other districts supporting the Government's position include *Cheema v. Swearingen*, Case No. 25-cv-609, Doc. 17 (S.D. Ind. December 16, 2025); *Oliveira v. Patterson*, No. 25-cv-01463, (W.L.A. Nov. 4, 2025); *Sandoval v. Acuna*, No. 25-cv-01467, (W.L.A. Oct. 31, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025).

States submits that this line of decisions is unpersuasive for the reasons explained by this Court in *Cirrus Rojas* and *Ugarte Arenas*.[7]

II. No Due Process Violation

Beyond alleging that his continuing detention violates the INA, Petitioner alleges that it violates his due process rights under the Fifth Amendment to the United States Constitution. (ECF 11, at ¶¶ 69-72.) As noted above, Congress has specifically authorized immigration officers to arrest and detain foreign nationals for purposes of removing them from the country, and such procedures have consistently withstood due process challenges. *See, e.g., Jennings*, 583 U.S. at 323 ("This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice.") (Thomas, J., concurring in part and concurring in the judgment) (citations omitted); *see also Denmore*, 538 U.S. at 523 ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention

[7] On December 11, 2025, a Seventh Circuit Court of Appeals motions panel issued *Castanon-Nava v. U.S. Dep't of Homeland Security*, No. 25-3050, —F.4th—, 2025 WL 3552514 (7th Cir. 2025). In that decision, the panel considered whether Section 1225(b)(2) "covers any noncitizen who is unlawfully already in the United States as well as those who present themselves at its border." *Id.* at *8. The panel tentatively concluded that the Government is "not likely to succeed on the merits" of its interpretation of 8 U.S.C. § 1225(b)(2)(A). *Id.* at *8-10. However, that decision is not binding precedent: "Decisions by motions panels are summary in character, made often on a scanty record, and not entitled to the weight of a decision made after plenary submission." *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir. 1991). Indeed, *Castanon-Nava* repeatedly emphasized the tentative nature of its conclusions. 2025 WL 3552514, at *8-10. For the reasons set forth in this response and in the Respondent's Opposition to the Emergency Motion for Release Pending Appeal in *Rojas v. Olson*, Appeal No. 25-3217, at Doc. 13 (7th Cir. Dec. 19, 2025), the Seventh Circuit's tentative conclusions should not be found persuasive.

during deportation proceedings as a constitutionally valid aspect of the deportation process."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (explaining that deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character").

Given that Petitioner remains in removal proceedings, his detention has neither been prolonged, nor indefinite, and he cannot demonstrate that there exists "no reasonable likelihood of his removal in the foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001). As the Court summarized in *Cirrus Rojas*:

> Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas's detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Denmore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Denmore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. As explained in *Parra*, Cirrus Rojas's liberty interest is limited, and he has the key to his release in his own pocket; he can choose to accept removal to his homeland under Section 1229a.

Cirrus Rojas, 2025 WL 3033967, at *12 (citing *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)).

Petitioner has not submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings. Petitioner is receiving the process to which he is due through his removal proceedings under 8 U.S.C. § 1229a(b)(4). The United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Parra*, 172 F.3d at 958. The Petition fails to show that the

deprivation of Petitioner's liberty—as an unadmitted foreign national with no status in the United States—while he awaits the conclusion of his removal proceedings violates due process. *Denmore*, 538 U.S. at 531 (no due process violation in detaining foreign national pending removal proceedings); *Parra*, 172 F.3d at 958 ("The private interest here is not liberty in the abstract, but liberty *in the United States* by someone no longer entitled to remain in this country but eligible to live at liberty in his native land[.]"). The Court should deny any relief sought pursuant to an argument that Petitioner's right to due process has been violated.

CONCLUSION

For all these reasons, Respondent respectfully requests that the Court deny Petitioner's habeas petition, grant him judgment as a matter of law, and dismiss this case with prejudice.

Dated at Milwaukee, Wisconsin this 13th day of January 2026.

Respectfully submitted,

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