IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EDENILSON ANTONIO RIVAS-MUNOZ,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Civil Action No. 8:26-cv-45-ABA

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

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Respondents, United States Department of Homeland Security ("DHS") Secretary Kristi Noem, United States Immigration and Customs Enforcement ("ICE") Acting Director Todd M. Lyons, ICE Baltimore Field Office Director Nikita Baker, and United States Attorney General Pamela Bondi (collectively, "Respondents"), by and through undersigned counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, and Michael J. Wilson, Assistant United States Attorney for that District, hereby (1) respond to the Petition for Writ of Habeas Corpus (ECF No. 1, and hereinafter the "Petition" or "Pet.") filed by Petitioner Edenilson Antonio Rivas-Munoz ("Petitioner") (2) oppose Petitioner's Motion for Temporary Restraining Order (ECF No. 2); and (3) move the Court to dismiss[1] the Petition in its entirety, and state as follows:

I. INTRODUCTION

Alleging violations of the Immigration and Nationality Act (the "INA"), the Due Process Clause of the Constitution, and the Fourth Amendment to the Constitution, Petitioner challenges the lawfulness of his detention by ICE and seeks immediate release from custody under 28 U.S.C. § 2241, or a bond hearing. But because Petitioner has not alleged and cannot establish that he is in

[1] Respondents note from the outset that this and other Courts have rejected this relief in cases raising the same issues. *See, e.g., Hernandez-Lugo v. Bondi*, GLR-25-3434, 2025 WL 3280772 (D. Md. Nov. 25, 2025); *Maldonado v. Baker*, No. 25-3084-TDC, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Pineda Velasquez v. Noem*, No. GLR-25-3215, 2025 WL 3003684 (D. Md. Oct. 27, 2025); *see also Y-C- v. Genalo*, 2025 WL 3653496, at *5 (E.D.N.Y. Dec. 17, 2025) (joining the "overwhelming, lopsided majority" to rule against Respondents). These decisions are non-binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011), and other Courts have persuasively ruled differently, including as recently as December 15, 2025. *See, e.g., Coronado v. Secretary, DHS, et al.*, Case No. 1:25-cv-831, 2025 WL 3628229, at *6 (S.D. Ohio Dec. 15, 2025) ("the Court concludes that § 1225(b)(2) governs [Petitioner's] detention, and that his detention without a bond hearing does not violate either that statute or due process"); *see also Oliveira v. Patterson*, Civ. A. No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, Civ. A. No. 2025 WL 3048926, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, Civ. A. No. 2025 WL 3113646, 2025 WL 3113646 (W.D. La. Oct. 22, 2025); *Vargas Lopez v. Trump*, Case No. 2025 WL 2780351, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

"custody in violation of the Constitution or laws or treaties of the United States[,]" 28 U.S.C. § 2241(c)(3), the Court cannot extend the writ of habeas corpus to him. Respondents lawfully detained Petitioner under 8 U.S.C. § 1225, and so he is not entitled to the relief he seeks. His Petition should be denied and/or dismissed.

II. BACKGROUND

A. Factual and Procedural History.

Petitioner is a citizen and native of El Salvador who claims to have entered the United States in 2005 without being inspected, admitted, or paroled by an immigration official. Pet. ¶ 1. On January 3, 2026, the Enforcement and Removal Operations ("ERO") Baltimore ICE Field Office Field Intelligence Unit (the "Unit") traveled to Frederick, Maryland to conduct an enforcement operation. Exhibit 1 (Petitioner's Record of Deportable/Inadmissible Alien) at 2. During the enforcement operation, Unit officers performed record checks on several vehicles' license plates, including one that was registered to the Petitioner. *Id.* Unit officers determined that Petitioner's Maryland driver's license carried a "U" restriction, "signifying that the license is not acceptable for federal purposes." *Id.* Unit officers determined that the U restriction indicated that Petitioner "might not possess lawful immigration status or valid identity documents required for federal purposes." *Id.* Based on this reasonable suspicion, officers conducted a vehicle stop and encountered Petitioner in the vehicle. *Id.* at 2–3.

Unit officers confirmed that Petitioner did not have an alien registration number and was present in the United States without immigration documentation. *Id.* at 3. Unit officers then arrested Petitioner and transferred him to the ICE Baltimore Field Office for detention until the conclusion of his removal proceedings. *Id.* at 3. Upon arriving at the detention center, Petitioner was served with a Warrant for Arrest of Alien and a Notice to Appear. *See* Exhibit 2 (Warrant for

Arrest of Alien); Exhibit 3 (Notice to Appear). The Notice to Appear charged Petitioner with violating INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) and § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)). *See* Ex. 3. Under the INA § 212(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 in Elizabeth, New Jersey, pending his ongoing removal proceedings.

On January 7, 2026, Petitioner initiated this habeas action pursuant to 28 U.S.C. § 2241 while he was held by ICE in Baltimore, Maryland. In the Petition, Petitioner challenges the lawfulness of his detention by ICE. The Petition asserts three counts: (1) violation of the Fifth Amendment's Due Process protections (Count I); (2) violation of the Fourth Amendment for a warrantless search (Count II); and (3) a standalone claim for relief under 28 U.S.C. § 1361 (Count III).[2] Pet. at 5–8. In addition to the Petition, Petitioner also filed a Motion for Temporary Restraining Order (the "TRO Motion") seeking "an emergency order from this Court to halt [Petitioner's] continued detention, transfer out of this district, and removal from the United States."[3] ECF No. 2.

Though neither the Petitioner nor the TRO Motion discuss 8 U.S.C. §§ 1225 and 1226, those provisions control the Court's resolution of the Petition. Accordingly, background on those provisions is set forth below.

[2] Count III is based on the same alleged violations of the Fourth and Fifth amendment as Counts I and II, and therefore appears to be entirely duplicative. Accordingly, Respondents believe that Count III of the Petition should be dismissed for the reasons set forth below with respect to Counts I and II.

[3] The TRO Motion refers to a claim purportedly brought under the Administrative Procedure Act (TRO Motion at 5), but no such claim is alleged in the Petitioner itself.

B. Legal Context.

i. 28 U.S.C. § 2241.

Section 2241 of Title 28 of the United States Code extends the writ of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States[,]" 28 U.S.C. § 2241(c)(3), and confers jurisdiction on this Court to hear habeas challenges asserted by undocumented noncitizens about the legality of their detention. *Rasul v. Bush*, 542 U.S. 466, 483 (2004); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The two provisions of the INA at issue here—8 U.S.C. § 1225 and 8 U.S.C. § 1226—both provide for the detention of undocumented noncitizens, such as Petitioner. Section 1225(b)(2)(A) mandates Petitioner's detention, while Section 1226(a) makes detention discretionary and affords Petitioner the statutory right to a bond hearing before an immigration judge.

ii. 8 U.S.C. § 1225 Detention.

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Section 1225(b)(2) is "broader" than (b)(1) and serves as a "catchall provision that applies to all applicants for admission" not covered by (b)(1) (with specific exceptions not relevant here). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

In relevant part, it states:

(2) Inspection of other aliens

(A) In general

> 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 [*i.e.*, standard – versus expedited – removal proceedings].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). Put simply, pursuant to § 1225(b)(2)(A), an "applicant for admission" shall be detained until removal proceedings have been concluded "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." *Id.*; *see also Coronado v. Secretary, DHS*, Case No. 1:25-cv-831, 2025 WL 3628229, at *10 (S.D. Ohio Dec. 15, 2025) ("if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate").

iii. 8 U.S.C. § 1226 Detention.

On the other hand, 8 U.S.C. § 1226 provides for arrest based on a warrant; detention; and, possible release of aliens. It states, in pertinent part:

> **(a) Arrest, detention, and release**
>
> On 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. Except as provided in subsection (c) and pending such decision, the Attorney General--
>
> **(1)** may continue to detain the arrested alien; and
>
> **(2)** may release the alien on—
>
> **(A)** bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> **(B)** conditional parole[.]

8 U.S.C. § 1226(a)(1), (2). An alien can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is enterred. 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

iv. The Interplay of § 1225 and § 1226.

In *Melgar v. Bondi*, the United States District Court for the District of Nebraska described the two statutes as "overlap[ping] as to the aliens they cover, like a Venn Diagram." No. 8:25CV555, 2025 WL 3496721, at *12 (D. Neb. Dec. 5, 2025). The Court explained that "some

aliens certainly fall within § 1225(b)(2), even if they may also fall within § 1226(a)." *Id.* In those circumstances, the Respondents may either: "1) detain such aliens without the possibility of release on bond under § 1225(b)(2), or 2) detain the aliens under § 1226(a) and provide the permissive possibility of release on bond." *Id.*; *see also id.* at * 13 (Sections 1225(b) and 1226(a) are "properly read as overlapping rather than mutually exclusive"); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (observing the "overlapping relationship" between § 1226(b) and § 1226(a)); *P. B. Petitioner, v. Bergami, et al.*, Civ. A. No. 3:25-CV-02978-O, 2025 WL 3632752, at *5 (N.D. Tex. Dec. 13, 2025) (explaining that § 1226(a) and § 1225(b) provide the "Government with two avenues for detaining aliens who are not admitted into the country"); *see also Coronado*, 2025 WL 3628229, at *10 ("each statute governs as to those aliens to which it applies -- § 1225(b)(2) to those here unlawfully, and § 1226(a) to those here lawfully[,]" such as pursuant to a visa).

III. LEGAL STANDARDS

A. Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted – Federal Rule of Civil Procedure 12(b)(6).

A Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008). To survive a 12(b)(6) motion, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level," thereby nudging the "claims across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Generally, the Court must accept as true the allegations of a complaint, but this tenet "is inapplicable to legal conclusions" or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Statutory Construction.

In statutory construction, three factors predominate: 1) statutory text; 2) statutory purpose; and 3) consequences of different statutory interpretations. *Stiltner v. Beretta U.S.A. Corp.*, 74 F.3d 1473, 1482 (4th Cir. 1996); *Abramski v. United States*, 573 U.S. 169, 179 (2014) (statutory construction involves interpreting "the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose'"); *Hernandez-Lugo v. Bondi*, Civ. A. No. GLR-25-3434, 2025 WL 3280772, at *5 (D. Md. Nov. 25, 2025) (engaging in "statutory interpretation" in a similar case).

IV. ARGUMENT

Petitioner is either detained under § 1225(b) as Respondents contend, in which case his detention is mandated by statute, or else he is detained under § 1226(a) as Petitioner appears to contend (*e.g.*, by requesting a bond hearing), in which case he has failed to state a claim upon which relief can be granted because his detention has not become unconstitutionally prolonged. Because Petitioner was never lawfully admitted to the United States, he remains an applicant for admission (even though he was found within the interior of the country), and his detention pending removal is mandatory. The Petition therefore fails to state any claims and should be denied/dismissed.

A. Petitioner Fails to Allege Any Violation of the INA or the Fifth Amendment as He is Lawfully Detained under 8 U.S.C. § 1225(b).

i. The Statutory Text Supports Petitioner's Mandatory Detention.

Statutory interpretation ordinarily begins and ends with the text of the statute, which includes its statutory context. *See Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) ("As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the

words used. Thus, absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive"); *see also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) ("[T]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context").

Section 1225(a)(1), titled "Aliens treated as applicants for admission," defines an "applicant for admission" as a person "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[.]" *Id.* (emphasis added); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("an alien who tries to enter the country illegally is treated as an '*applicant for admission*'" (emphasis added)). Statutory language "is known by the company it keeps[,] *McDonnell v. United States*, 579 U.S. 550, 569 (2016), thus, the phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a). In addition to § 1225(a)(1) defining "applicant for admission" as a person "who has not been admitted," § 1225(a)(3) also states that all "aliens [] who are applicants for admission *or* otherwise seeking admission" must be inspected. *Id.* (emphasis added). In this context, the word "or" "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013); *accord Altamirano Ramos v. Lyons*, Case No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *5, 7 (C.D. Cal. Nov. 12, 2025) (concluding that "*or otherwise seeking admission*" in 8 U.S.C. § 1225(a)(3) is a "phrase that is synonymous with what precedes it," – *i.e.*, "applicant for admission"). Through § 1225's plain language, Congress made clear that "applicants for admission" are the same as people "seeking admission." *Id.*

Petitioner does not claim that he has been admitted to the United States. Pet. ¶ 1. He is therefore an "applicant for admission" or alien "seeking admission," and falls within either section

1225(b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287 (under 8 U.S.C. § 1225, an "alien who [] is present in this country but has not been admitted is treated as an applicant for admission"); *Coronado*, 2025 WL 3628229, at *7 (petitioner was an "applicant for admission" because he was "present here, and he was not admitted"). Regardless of whether he falls under (b)(1) or (b)(2), Petitioner must be detained until his removal proceedings have concluded. 8 U.S.C. § 1225(b)(2) (any "applicant for admission" who "is not clearly and beyond a doubt entitled to be admitted" "*shall* be detained" (emphasis added)); *Jennings*, 583 U.S. at 297 ("aliens claiming a credible fear of persecution under" section (b)(1) "*shall* be detained for further consideration of the application for asylum[,]" while "aliens falling within the scope of § 1225(b)(2) *shall* be detained for a [removal] proceeding" (emphasis added)).

Thus, the plain language of the statute demonstrates that all unadmitted and uninspected noncitizens are "applicants for admission." *See, e.g.*, 8 U.S.C. § 1225(b)(2)(a) (referring to an alien "who is an applicant for admission" and "an alien seeking admission" interchangeably); *see also Melgar*, 2025 WL 3496721 at *9 (observing that Section 1225(b) is not limited to an "arriving alien[;]" "instead, it also applies to an alien present in the United States *who had not been admitted*" (emphasis added)); *Candido v. Bondi*, Case No. 25-CV-867 (JLS), 2025 WL 3484932, at *2 (W.D.N.Y. Dec. 4, 2025) (the "statutory scheme [] reveals" that 'applicant for admission' and 'seeking admission' are synonymous"); *Lucero v. ICE, et al.*, Case No. 1:25-cv-823, 2025 WL 3718730, at *2 (S.D. Ohio Dec. 23, 2025) (same); *Coronado*, 2025 WL 3628229, at *8 ("the more natural reading" of "alien seeking admission" is that it is "just another way of saying 'alien who is an applicant for admission.' After all, in normal usage, someone who is an 'applicant for admission' is also necessarily 'seeking admission'").

In *Melgar*, the United States District Court for the District of Nebraska analyzed the interplay between § 1225 and § 1226, relying on the statutory text to conclude that just because petitioner "remained illegally in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)." 2025 WL 3496721, at *12. The Court explained that because the petitioner was in the United States, "working here[,] providing for his family," and "intend[ed] to stay here and not be removed," "as a matter of plain language," he was an "applicant for admission" subject to mandatory detention under § 1225(b). *Id.*

In *Liang v. Almodovar*, the United States District Court for the Southern District of New York similarly concluded that the "the plain text of Section 1225(b)(2)(A) provides for mandatory detention of an alien," such as Petitioner, "who is present in the United States, has not been admitted, and is not clearly and beyond a doubt entitled to be admitted." Civ. A. No. 1:25-cv-09322-MKV, 2025 WL 3641512, at *3 (S.D.N.Y. Dec. 15, 2025). In that case, the Court explained that, by "Congressional design," an alien who "skips" inspection at the border and then becomes "present in this country" without admission "remains an applicant for admission" and is therefore subject to detention "under §§ 1225(b)(1) and (b)(2) as though he were still at the border." *Id.* at *4. "This remains the case no matter how far into the interior the alien makes his way[.]" *Id.*; *accord Coronado*, 2025 WL 3628229, at *7 (relying on 8 U.S.C. § 1101(a)(13)(A) to conclude that "'admission'" specifically means *lawful* entry, not just any presence in the United States" (emphasis in original)); *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("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 immigration laws").

So too, here. Petitioner alleges that he entered the United States unlawfully in 2005, is working a stable job, married to a United States citizen, the father of a minor United States citizen,

and has strong family and community ties to Maryland. Pet. ¶ 4. He clearly intends to stay in the United States, which is evident not only from these allegations demonstrating his ties to the country, but also from his allegation that he intends to apply for cancellation of removal at his upcoming hearing in Immigration Court in order to stay in the Country. Pet. ¶ 14. The Court should conclude that under the "plain language" of § 1225(b)(2), Petitioner is an "applicant for admission" subject to mandatory detention. *Candido*, 2025 WL 3484932, at *2-3 (relying on dictionary definitions, including Blacks Law Dictionary, and their "ordinary, everyday meanings," to show that the terms "applicant" and "seeker" are synonymous; that to "seek" means to "to ask for" or "request[;]" and that "applicant" means "[s]omeone who requests something").

This interpretation makes sense in light of Congress's use of the present participle—"seeking"—in 8 U.S.C. § 1225(b)(2)(A) to "signal present and continuing action." *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress's use of a verb tense is significant in construing statutes"). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *See, e.g., Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (plaintiff "having sleep apnea" means that plaintiff is "viewed today as currently suffering from sleep apnea." The term "having," means "presently and continuously[;]" it is a "present participle, used to form a progressive tense"). As a present participle, "seeking" expresses "present action in relation to the time expressed by the finite verb in its clause," which here, is "determines." *Present Participle*, MERRIAMWEBSTER, http://www.merriam-webster.com/dictionary/pr esent%20participle (last visited January 14, 2026); 8 U.S.C. § 1225(b)(2)(A).

This interpretation is also buttressed by decisions from the Board of Immigration Appeals ("BIA"), which is tasked with reviewing the decisions of immigration judges. In *Matter of Lemus-*

Losa, the BIA recognized that literal "requests" for admission are not required to be "seeking" admission: there are "many people who are not *actually* requesting permission to enter the United States[,]" but "are nevertheless deemed to be "seeking admission" as "constructive applicants for admission." 25 I. & N. Dec. at 743 (emphasis in original), 743 n.6. This is because, as the BIA recognized, Congress defined "applicant for admission" 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[.]" *Id.*

More recently, in *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216 (BIA 2025), the BIA rejected petitioner's argument that because he had "been residing in the interior of the United States for almost 3 years," he could not "be considered 'seeking admission'" under § 1225 as "not supported by the plain language of the INA." *Id.* at 221. As the BIA recognized, the plain language of § 1225 does not require an individual to have "literally [] submitted an application for admission." *Altamirano Ramos*, 2025 WL 3199872, at *5. This Court should likewise conclude that Section 1225's mandatory detention provision applies to Petitioner.

Case law from this and other Circuits, though arising in different immigration contexts, confirms that courts have consistently interpreted the plain language of § 1225(b) to turn on whether a noncitizen has been lawfully admitted, and not on a semantic distinction between "seeking admission" and "applicant for admission." *See, e.g., Augustin v. Sava,* 735 F.2d 32, 36 (2d Cir. 1984) ("unofficial entry" has "no effect on the 'unadmitted' alien's status because it does not constitute a legal entry even though the alien is physically present in the United States"); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (concluding that because the petitioner, a U-Visa applicant, "was never lawfully admitted [to the United States], he was "seeking admission"); *Santana v. Garland*, 92 F.4th 491, 497 (4th Cir. 2024), *cert. granted, judgment*

vacated on other grounds, 145 S. Ct. 1042 (2025) ("a noncitizen residing in the United States, and who applies for an adjustment of status, is to be evaluated like an *applicant for admission*, despite the noncitizen being then physically located in the United States" (emphasis added)).

By the statute's plain language, because Petitioner entered the United States unlawfully without inspection, he is an "applicant for admission"/"seeking admission" under 8 U.S.C. § 1225(a)(1) and subject to the inspection, detention, and removal procedures of 8 U.S.C. § 1225(b). His detention is therefore lawful, and his Petition should be denied/dismissed.

ii. The Statutory Purpose Supports Petitioner's Mandatory Detention.

In addition to the statute's plain text, which the Court should strongly presume expresses congressional intent, *see, e.g., Ardestani v. I.N.S.*, 502 U.S. 129, 135 (1991), the INA's legislative history supports the Respondents' position. Congress enacted the detention provisions in §§ 1225 and 1226 as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. In enacting the IIRIRA, Congress intended to resolve an "anomaly" in immigration law under which aliens who entered unlawfully and were present in the United States were permitted to request a bond hearing during removal proceedings (like Petitioner seeks to do here), while noncitizens who lawfully presented themselves at ports of entry were not so permitted. *See, e.g., Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (in enacting the IIRIRA, Congress "intended to do away" with creating a "perverse incentive to enter at an unlawful rather than a lawful location"). There would have been no need for Congress to expand 8 U.S.C. § 1225(b) through the IIRIRA to apply to a broader category of people, including those who cross the border illegally, if 8 U.S.C. § 1226 were meant to apply to those present in the United States without admission, like Petitioner.

Section 1226(a)'s recent amendments by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025), which added a new category of aliens subject to mandatory detention, further reflect Congress's "effort to be doubly sure" that certain aliens are detained. *Barton v. Barr*, 590 U.S. 222, 239 (2020); *Coronado*, 2025 WL 3628229, at *11 (the Laken Riley Act's requirement that detention without bond of certain non-citizens who are arrested and charged with committing certain crimes is "hardly akin to a command" that certain other non-citizens, like Petitioner, shall not also be subject to detention without bond). As in *Gambino-Ruiz*, this Court should "refuse" to adopt Petitioner's apparent position, which would interpret §§ 1225 and 1226 in a "way that would in effect repeal" Congress's "statutory fix." 91 F.4th at 990.

Though Petitioner may argue that evidence of the IIRIRA's intended purpose can be gleaned from its prior implementation and enforcement, the Supreme Court's recent pronouncement in *Loper Bright Enters. v. Raimondo* demonstrates that the statute's plain language, not the way prior Administrations have implemented it, evinces Congressional intent. 603 U.S. 369, 411 (2024). In *Loper Bright*, the Supreme Court overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated the IIRIRA by twenty years, confirming that longstanding agency practice carries little, if any, weight. 603 U.S. at 380; *Coronado*, 2025 WL 3628229, at *12 ("even a long-established practice does not justify a rule that denied statutory text its fairest reading"). Judges should not "disregard[]" their "responsibility" of interpreting the law independent of political branches "just because an Executive Branch agency views," or has viewed, "a statute differently." *Loper Bright*, 603 U.S. at 412; *see also Liang*, 2025 WL 3641512, at *5 (declining to adopt the argument that the prior Administration's immigration decisions means that the current Administration has "relinquished the authority to apply Section 1225 according to its plain terms"). "[R]egardless of

the duration of the practice," a Court should not "defer to an agency's *former* (and now-discarded) interpretation." *Coronado*, 2025 WL 3628229, at *12 (observing that if such deference were warranted, then "one could argue that courts should refer to the DOJ's *current* interpretive guidance") (emphasis in original). "[R]ead most naturally" and supported by legislative intent, "§§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission[,]" like Petitioner, until removal proceedings have concluded. *Jennings*, 583 U.S. at 297.

iii. Interpretive Consequences Support Petitioner's Mandatory Detention.

An examination of interpretive consequences, either as a comparison of the results of each proffered construction, or as a principle of avoidance of an absurd or unreasonable reading, underpins the Resopndents' interpretation. *See Rogers v. Sav. First Mortg., LLC*, 362 F. Supp. 2d 624, 636–37 (D. Md. 2005) ("[a]ll laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or absurd consequence"). Here, the conclusion that Section 1225 applies to Petitioner as an alien who entered without "be[ing] admitted[,]" 8 U.S.C. § 1225(a)(1), "maintains the dichotomy prescribed by Congress in the IIRIRA by distinguishing between those who effectuate a lawful entry (even if later found removable)" and those who illegally entered. *Liang*, 2025 WL 3641512, at *4. It also prevents incentivizing unlawful entry into the United States and penalizing those who follow the proper, lawful method of admission.

Under Petitioner's apparent proposed approach, people who present at the border will have limited rights, since they remain "seeking admission." But people like Petitioner, who unlawfully enter the United States will, at some undefined point in time, no longer be "seeking admission" and have greater rights than a person following the law. This "incongruous result," which rewards aliens who "surreptitiously" and unlawfully enter the United States without inspection and

"subsequently evade apprehension for number of years[,]" must be avoided. *Hurtado*, 29 I. & N. Dec. at 228; *accord Thuraissigiam*, 591 U.S. at 139 (unlawful entrants who violate immigration laws and evade detection must, once found, be "treated as if stopped at the border"); *Gambino-Ruiz*, 91 F.4th at 990 (a rule that treats a person who enters illegally, such as Petitioner, more favorably than a person who is detained after arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location").

This interpretation also prevents the "legal conundrum" that the BIA described in *Hurtado*: "If [Petitioner] is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" 29 I. & N. Dec. at 221. Similar to *Hurtado*, Petitioner attempts to create a new class of alien who is neither lawfully admitted into the United States but who is also not seeking admission into the United States, and is therefore somehow entitled to a bond hearing under an entirely different statutory scheme. This interpretation, which reads "applicant for admission" out of § 1225(b)(2)(A), violates one of the "most basic interpretive canons" of statutory construction. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (a "statute should be construed so that effect is given to all its provisions").

Because Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), his detention is mandated by statute until he is removed, and he is ineligible for a bond hearing. His detention is not in violation of the Fifth Amendment (Count I) or the INA, and his Petition should be denied and/or dismissed.

B. Petitioner Fails to Allege any Due Process Violation (Count I).

Count I should likewise be dismissed because Petitioner did not effectuate a "lawful entry[,]" and therefore remains "on the threshold of initial entry[,]" subject to the "entry fiction" doctrine. *See Thuraissigiam*, 591 U.S. at 140. Under that doctrine, though Petitioner contends that he has been physically present in the United States since 2005, he has never been admitted and,

therefore, is treated as if he were stopped at the border. *Id.* at 139 (collecting cases). Noncitizens stopped at the border/subject to the entry fiction doctrine are at "the threshold of initial entry" and therefore "cannot claim any greater rights under the Due Process Clause" than those afforded to them by statute. *Id.* at 107. And as to "foreigners who have never [] been admitted into the country pursuant to law" like Petitioner, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Id.* at 138 (citation omitted).

In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court concluded that mandatory detention pending removal proceedings does not violate due process. *Id.* at 530 (detention pending removal "is a constitutionally permissible part of that process"). Though Petitioner is "physically in the country," he is "not regarded as having 'entered,'" and therefore "has not acquired the full protection of the constitution." *Liang*, 2025 WL 3641512, at *5 (quoting *United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967)). "Whatever 'grace' Congress and the Executive Branch have thus far bestowed upon Petitioner," including his initial ability to enter and remain clandestinely in the Country, "'bestows no additional [due process] rights.'" *Id.* (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

Further, as in *Liang*, even if the "entry fiction" did not apply, Petitioner has not sought a bond hearing based on the duration of his detention, which, at the time of this filing, has been about two weeks. *Id.* at *6. There is no suggestion that Petitioner's two-week detention has been "unreasonably long." *See, e.g., Zadvydas*, 533 U.S. at 700–01 (six months of post-removal-order detention is "presumptively reasonable"); *accord Lucero*, 2025 WL 3718730, at *6 (detention of detainee who entered the country unlawfully did not "run [] afoul of the Due Process Clause"

because the detention was not "unreasonably long"). Since Petitioner cannot show any due process violation, Count II should be denied and/or dismissed.

C. Petitioner's Fourth Amendment Challenge (Count II) is Improperly Raised via this Petition.

Petitioner's Fourth Amendment challenge to the reasonableness of his detention is without merit. *See* Pet. at7–8. As set forth above, Unit officers believed they had reasonable suspicion to stop Petitioner based on his U restriction on his driver's license (Ex. 1 at 3) and served Petitioner with a Warrant for Arrest of Alien shortly after his arrest. Ex. 2. In any event, Petitioner provides scant 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 federal 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."); *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 Is Not Likely to Succeed on the Merits of His Claims and The Court Should Deny the Motion.

In order to obtain the extraordinary relief sought in the TRO Motion, Petitioner must satisfy four elements: first, he must show that he is likely to succeed on the merits; second, that he will likely experience irreparable harm unless the court grants relief; third, that the balance of equities weighs in his favor; and fourth that an injunction is in the public interest. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *Frazier v. Prince George's Cnty.*, 86 F.4th 537, 543 (4th Cir. 2023). The last two factors—balance of equities and the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

For the reasons discussed above, Petitioner is not likely to succeed on the merits of his claims and he therefore fails to satisfy the first prong of the *Winters* test. 555 U.S. at 20. Accordingly, the Court should deny the TRO Motion.

V. CONCLUSION

For the foregoing reasons, the Petition should be dismissed for failure to state a claim upon which relief may be granted.

Dated: January 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 15, 2026, I electronically filed the foregoing and all exhibits thereto with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all counsel.

/s/
Michael J. Wilson