

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 26-cv-20294-MOORE

**RAMON PERALTA-DORMES,
BRYAN MARRERO BETANCOURT, and
ROSARIO ROBLERO-VELASQUEZ,**

Petitioners,

v.

TODD LYONS et al.

Respondents.

RESPONDENTS' OMNIBUS RETURN AND MEMORANDUM OF LAW

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Orders to Show Cause relating to three unrelated Petitioners, Ramon Peralta Dormes, Bryan Marrero Betancourt, and Rosario Roblero-Velasquez (ECF No. 5 and 14).¹

It is the government's position that all three petitions should be denied. For clarity, in light of the fact that these three petitions involve different backgrounds and histories, the government is providing separate analyses for each petitioner as follows:

¹ In paperless order at Docket Entry 14, the government's deadline relating to this Order to Show Cause was changed to January 30, 2026 after the Court consolidated this matter with that of two unrelated Petitioners, Bryan Marrero Betancourt (original case number: 26-cv-20361) and Rosario Roblero-Velasquez (original case number: 26-cv-20333). The government also respectfully requests leave to exceed the 20-page limit in this filing because these petitioners' circumstances require a distinct and robust analysis.

GOVERNMENT’S RETURN AS TO PETITIONER, RAMON PERALTA-DORMES

As set forth fully below, the Court should deny the “Petition for Writ of Habeas Corpus” (ECF No. 1) (“Petition”).

I. BACKGROUND

Petitioner’s relevant immigration history is accurately set forth in Paragraphs 24 through 29 of the Petition, insofar as he is a native and citizen of Honduras who entered the United States without inspection, he is detained at BTC, filed a request for a custody redetermination, and such was denied by the immigration judge pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

On January 15, 2026, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b). (DE 1)

II. ARGUMENT

Petition should be Dismissed for Lack of Jurisdiction

Section 1252(g) categorically bars jurisdiction over “any cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to

detain him during 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*, No. CV 08–2943 CAS (PJWx), 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*, No. CV 10-0389 SVW (RCx), 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); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[.]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added).

Put in the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. See *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). As such, judicial review of the Petitioner’s claims is barred by § 1252(g).

Furthermore, 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claim in this case. Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“*AADC*”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated

to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). 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.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges

the decision and action to detain him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove him from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *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*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner’s claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Petitioner *does* challenge the government’s decision to detain him in the first place. Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the

Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

Petitioner does not have standing to bring his Administrative Procedures Act (“APA”) claim.

Petitioner also does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

Petitioner is Properly Detained Under 8 U.S.C. § 1225(b)(2)(A)²

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as either an “alien present in the United States who has not been admitted or [an alien] who arrives in the United States []whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1) (emphasis

² It is the government’s position that Petitioner is subject to mandatory detention under § 1225(b), because he was present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). *See Iraheta Morales, v. Noem et al.*, Case No. 25-62598-CIV-SINGHAL (S.D. Fla. Dec. Jan. 29, 2026) (“an ‘applicant for admission’ is any ‘alien present in the United States who has not been admitted’ regardless of the amount of time physically present on U.S. soil.”) However, the government acknowledges that Judges in this District have reached the opposite conclusion. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41, (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that “detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States.); *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility” and finding that “section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”; *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Penagos Quintero v. Ripa, et al.*, Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Martinez v. Field Off. Dir.*, No. 25-26026-CIV-LEIBOWITZ, ECF No. 7 (S.D. Fla. Jan. 14, 2026) (“Pending the Eleventh Circuit’s resolution of this issue, the Court continues to side with the clear weight of existing authority in finding that Petitioner here is entitled to a prompt, individualized bond hearing under 8 U.S.C. § 1226(a)”; *Espinal Encarnacion v. ICE Field Office Director, et al.*, No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”; *Ocegueda Gonzalez v. Noem, et al.*, No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); *Acosta v. Ripa, et al.*, Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”; and *Fuentes Granados v. Secretary of Homeland Security, et al.*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“Petitioner is being unlawfully detained due to his improper classification as “an alien who is an applicant for admission” pursuant to 8 U.S.C. § 1225(b)(2)(A);] . . .Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”).

added); *see generally* *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” as used in § 1225 includes two categories of aliens: (1) aliens, such as Petitioner, present in the United States without admission; and (2) arriving aliens. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1))); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission ... includes, inter alia, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))).

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

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

Here, Petitioner does not allege that he was admitted into the United States or that he presented himself at a POE. Rather, Petitioner merely alleges that he is a citizen of Honduras who has been residing in the United States. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

Pursuant to § 1225(b)(2), “an alien who is an applicant for admission,” such as Petitioner, “shall be detained for a proceeding under section 1229a of this title” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Aliens present in the United States without admission placed in § 1229a removal proceedings are applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and are, therefore, aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). The term “seeking admission” as used in § 1225(b)(2)(A) refers to legal admission, not mere entry into the United States. Such aliens are subject to mandatory detention under § 1225(b)(2)(A) and are not eligible for release on bond.

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present

in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29 I&N Dec. at 220.³ The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*; see *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (concluding that 1996 amendments to the INA were passed to address the unintended and undesirable result of the pre-1996 law in which “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 actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings” (internal quotation marks omitted)). In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Yajure Hurtado*, 29 I&N Dec. at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.”

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

Id. If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).

The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with *Jennings v. Rodriguez* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).⁴

A review of the 1996 amendments to the INA support the reading advocated by the Respondents here. “The statutory definition of an ‘applicant for admission’ at ... § 1225(a)(1), was added to the INA in 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA’), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579.” *Yajure Hurtado*, 29 I&N Dec. at 222.

Prior to the 1996 amendment, the INA assessed status on the basis of “entry” as opposed to “admission.” See 8 U.S.C. § 1101(a)(13) (1994) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise”). Non-citizens who had “entered” the United States were processed for deportation; those who had not “entered” were sent into exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, 1-1 IMMIGRATION LAW AND PROCEDURE § 1.03(2)(b) (2010). As a result, “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 actually presented themselves to authorities for inspection were restrained by “more

⁴ There is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. See, e.g., *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

summary exclusion proceedings.” *Hing Sum*, 602 F.3d at 1100. To remedy this unintended and undesirable consequence, the IIRIRA substituted “admission” for “entry,” and replaced deportation and exclusion proceedings with the more general “removal” proceeding.

Martinez, 693 F.3d at 413 n.5 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)).

If, as Petitioner argues, § 1225(b)(2)(A) detention does not apply to him because he entered the United States without presenting himself for inspection or admission, he would be afforded greater substantive rights—specifically permissive detention under § 1226(a) and a bond hearing—than non-citizens who followed the law and presented themselves to authorities for inspection. This is the undesirable result Congress was seeking to avoid by passing the IIRIRA.

Moreover, Congress’s use of the present participle—seeking—in § 1225(b)(2)(A) further supports the Respondents’ position. *See generally United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). By using the present participle “seeking” § 1225(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). Present participle, such as “seeking admission,” “do[] not include something in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a progressive tense” that “means presently and continuously” (citing Bryan A. Garner, *Garner’s Modern American Usage* 1020 (4th ed. 2016))).

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under § 1225(b)(2)(A) and ineligible for release on bond.

Therefore, the ongoing evolution of law, starting with *Jennings* and the caselaw that followed, through and including *Yajure Hurtado*, have led us to the conclusion that § 1225(b)(2), not 1226, is the appropriate detention authority, and the one that applies at this time.

Petitioner's Due Process Claims Fail

Petitioner's constitutional claims fail as a matter of law. Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for noncitizens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

Petitioner's reliance on *Zadvydas v. Davis* is misplaced. To the extent that Petitioner argues that his detention violates his Due Process rights, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ECF No. 1 at ¶¶ 75-81), this Court should reject that claim because *Zadvydas* governs post-removal-order detention under § 1231, not pre-removal detention under § 1225.

***Maldonado-Bautista* is neither binding, preclusive nor applicable to Petitioner.**

To the extent that Petitioner is relying on *Maldonado-Bautista*, that reliance is misplaced. The December 18, 2025, partial final judgment in *Maldonado-Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, is neither binding nor applicable, and presents no basis for granting the petition. First, the *Maldonado-Bautista* declaratory judgment lacks legal effect on petitioners and custodians, such as the parties to this case, outside the Central District of California. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Maldonado-Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

1. The *Maldonado-Bautista* declaratory judgment lacks effect outside the Central District of California and over custodians located outside that District.

The *Bautista* class sought a declaratory judgment that class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, “[r]egardless of whether [] detainees formally request release from confinement,” if “their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotations omitted).

The Supreme Court imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. *Second*, a habeas petitioner

must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the “corpus.” *Padilla*, 542 U.S. at 435. “Failure to name the petitioner’s custodian as a respondent deprives federal courts of personal jurisdiction” needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a “judgment entered without personal jurisdiction over a defendant is void as to that defendant.” *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address “validity of a defense the State may, or may not, raise in a habeas proceeding” in part because “the underlying claim must be adjudicated in a federal habeas proceeding”); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the “availability of a habeas remedy in another district ousted us of jurisdiction over an alien’s effort to pose a constitutional

attack . . . by means of a suit for declaratory judgment”); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) (“In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is ‘in custody in violation of the Constitution . . . of the United States,’ This specific determination must override the general terms of the declaratory judgment . . . statute.”).

Unlike *Maldonado-Bautista* class members, Petitioner is confined *outside* of the Central District of California by an immediate custodian also *outside* the Central District of California and neither he nor his custodian have been named in the *Bautista* lawsuit. Because the *Maldonado-Bautista* court lacks jurisdiction to issue habeas relief to any petitioner or class member confined outside the Central District of California or against immediate custodians outside that District, its judgment cannot be binding and preclusive against parties outside the Central District of California. *Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the *Maldonado-Bautista* declaratory judgment does not have preclusive effect in its District. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

It is undisputed that Petitioner was detained in Florida, has remained detained in Florida and his immediate custodian is located in Florida. This ends the analysis on the matter. *Padilla*, 542 U.S. at 439-40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition). Consequently, the *Maldonado-Bautista* decision has no preclusive effect in this district and its decision does not bind this Court.

2. The Court should not give preclusive effect to a declaratory judgment on appeal.

Even if the *Maldonado-Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Maldonado-Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case.

Courts must exercise significant caution before giving preclusive effect to declaratory judgments on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment “from which it may be impossible to obtain relief” even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this “evil result[.]” *Id.* (“both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences”); *see also* 18A Fed. Prac. & Prod. § 4404 (“Awkward problems can result from the rule that preclusive effects attach to the first judgment” while that judgment is subject to an appeal); 18A Fed. Prac. & Proc. § 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates “[s]ubstantial difficulties”).

This problem can be “avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action.” *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9

A.L.R.2d 984 (the “only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered”). Accordingly, even if the *Maldonado-Bautista* judgment could be applicable to Petitioner, no preclusive effect should be given until its appeal is settled.

3. Affording preclusive effect to the *Maldonado-Bautista* declaratory judgment contravenes other principles of preclusion

Beyond the two most serious problems with giving effect to the *Maldonado-Bautista* declaratory judgment in this case addressed above, three more reasons counsel strongly against so.

First, under 28 U.S.C. § 2202, “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” To the extent this Court considers whether to award “further” relief than what the *Maldonado-Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither “necessary [n]or proper.” Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of California—has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as provided by statute. *Doe*, 109 F.4th at 1199.

Second, the circumstances of this case also counsel against applying issue preclusion against the government. The Supreme Court has “long recognized that ‘the Government is not in a position identical to that of a private litigant,’ *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates.” *United States v. Mendoza*, 464 U.S.

154, 159 (1984). “Government litigation frequently involves legal questions of substantial public importance.” *Id.* Thus, although the Supreme Court has held the federal government “may be estopped . . . from relitigating a question” when “the parties to the lawsuits are the same,” *id.* at 163, 164, it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing “nonmutual collateral estoppel against the government . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where neither Petitioner nor his current custodian were named parties in the ongoing *Maldonado-Bautista* litigation. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Maldonado-Bautista* court’s decision to freeze the law for all district courts nationwide, and stymies development of the law. This is particularly so because the *Maldonado-Bautista* court could never grant complete habeas relief to all class members as a result of § 1252(f)(1)—instead, the *Maldonado-Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int’l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

The court should also decline to give the *Maldonado-Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Maldonado-Bautista* would be unfair. See *Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); see, e.g., *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior “class action has no preclusive affect in habeas proceedings.” *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. See *Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because “conventional notions of finality of litigation have no place” in habeas and the inapplicability of res judicate to habeas is “inherent in the very role and function of the writ.”) (quoting *Sanders v. United States*, 373 U.S. 1, 8 (1963)); see also *Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) (“The doctrines of res judicate and collateral estoppel are not applicable in habeas proceedings.”);

Hierens v. Mizell, 729 F.2d 449, 456 (7th Cir. 1984) (“a decision in another case is not res judicata as to a habeas proceeding.”).

In sum, the *Maldonado-Bautista* declaratory judgment has no preclusive effect on this case.

4. The Court need not await a ruling staying or vacating the *Maldonado-Bautista* declaratory judgment before declining to give it preclusive effect.

Assessing whether the *Maldonado-Bautista* declaratory judgment required granting an individual class member’s habeas petition, the U.S. District Court for the Northern District of Texas persuasively explained why the *Maldonado-Bautista* declaratory judgment need not be followed by other U.S. district courts, even before a court of appeal stays or vacates that order:

A dispute in this posture is unusual, but not unheard of. As Justice Story remarked, the traditional comity between courts “does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given.” *Old Wayne Mut. Life Ass’n v. McDonough*, 204 U.S. 8, 16 (1907) (quoting Joseph Story, Commentaries on the Constitution of the United States § 1313 (1833)). It is “a subject [that] may be inquired into every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings.” *Williamson v. Berry*, 49 U.S. (8 How.) 495, 540 (1850); *Old Wayne*, 204 U.S. at 16–17 (same). Indeed, traditional habeas proceedings normally could only challenge “the power and authority of the court” or other detaining authority “to act.” *Brown v. Davenport*, 596 U.S. 118, 129 (2022) (quotation omitted). While the conclusions of another court, when enforced onto a peer court, are generally “unassailable collaterally,” an exception has always existed for “lack of jurisdiction.” *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202–03 (1830) (Marshall, C.J.) (same).

When the issuing court lacks jurisdiction, “its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought . . . in opposition to them; they constitute no justification, and all persons concerned in executing such judgments . . . are considered in law as trespassers.” *Williamson*, 49 U.S. at 541 (quoting *Elliott v. Piersol*, 26 U.S. (1 Pet.) 328, 329 (1828)); *Watkins*, 28 U.S. at 203 (“An

imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity[.]”).

* * *

The Court issues this Order with some reluctance. The business of another court is generally beyond this Court’s concern. But the petitioner seeks relief based on the Central District’s orders, leaving this Court no choice but to address their binding effect. Here, a fellow district judge purports to bind all pending and future cases involving the mandatory detention issue to her reasoning in an advisory opinion, disrupting this Court’s extensive immigration docket and the dockets of fellow courts across the Nation. But the Central District’s orders are not binding because the Central District lacked authorization to issue them. The orders are unauthorized because they are advisory and because they violate the INA’s limits on judicial review. Additionally, they would require this Court to act in defiance of Supreme Court precedent. Thus, the Court rejects the petitioner’s assertion that it is bound by the Central District’s orders and must grant relief as a result.

Calderon Lopez v. Lyons, No. 25-cv-00226, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28 attached as Exhibit G. Thus, because the *Maldonado-Bautista* declaratory judgment would be void if pertaining to Petitioner due to the *Maldonado-Bautista* Court’s lack of jurisdiction over the Petitioner and over his immediate custodian as discussed above, this Court is not required to wait for a court of appeals to stay or vacate that judgment before this Court declines to give it preclusive effect.

Regardless, even if the Court does not treat the *Maldonado-Bautista* judgment as void *now*, the blatant jurisdictional flaws and other points noted above counsel strongly in favor of the Court declining to give it preclusive effect.

GOVERNMENT’S RETURN AS TO PETITIONER, BRYAN MARRERO BETANCOURT

As to Petitioner by the name of Bryan Marrero Betancourt, the government respectfully submits the following:

Warden of Glades County Detention Center (“Respondent”), through the undersigned counsel, maintain that Bryan Marrero Betancourt’s (“Petitioner”) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”) (ECF No. 17) should be denied. First, the Court lacks jurisdiction because the Petition was not filed in the district of confinement. Petitioner is detained in the Glades County Detention Center (“Glades”), which is in the Middle District of Florida. Second, Petitioner ineligible for bond because he is subject to mandatory detention since he is in expedited removal proceedings, 8 U.S.C. § 1225(b)(1)(B)(ii).

I. BACKGROUND

On November 5, 2025, DHS issued a Form I-860, Notice and Order of Expedited Removal, pursuant to 8 U.S.C. § 1225(b). *See* Exhibit 1, Form I-860.

On December 11, 2025, DHS referred the matter to an Immigration Judge after an asylum officer concluded that Petitioner did not have a credible fear of persecution or torture, and Petitioner requested review of such decision. *See* Exhibit 2, Form I-863, Notice of Referral to IJ.

On December 22, 2025, an Immigration Judge vacated United States Citizenship and Immigration Service’s negative credible fear determination. *See* Exhibit 3, IJ Order.

On the same date, DHS issued a Notice to Appear (“NTA”) placing Petitioner in removal proceedings. *See* Exhibit 4, NTA, at 1. Petitioner was charged with inadmissibility under the Immigration Nationality Act (“INA”) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), for being

present without admission or parole, and under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(6)(A)(i), for being present without valid entry documents. (*Id.* at 4).

Petitioner is currently detained at the Glades County Detention Center located in Moore Haven, Florida, in the Middle District of Florida. *See* ECF No. 17 at ¶ 2.

II. ARGUMENT

A. The Petition should be denied for lack of jurisdiction, or in the alternative, transferred to the Middle District of Florida where Petitioner is detained

Section 2441 allows “the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge” to grant writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2441(a). The Supreme Court has interpreted the “within their respective jurisdiction language to mean that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (finding that that even for habeas petitions filed by immigration detainees, “jurisdiction lies in only one district: the district of confinement.”).

Courts have previously dismissed or transferred habeas petitions for lack of jurisdiction filed by immigration detainees located outside the Southern District of Florida. *See Zhang v. United States*, 21-cv-81382-ALTMAN, 2021 U.S. Dist. LEXIS 162725, at *2-3 (S.D. Fla. Aug. 25, 2021) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Glades County Jail, in Glades County, Florida, because jurisdiction lies in the district of confinement); *Dolme v. Barr*, 20-cv-24106-ALTMAN, 2020 U.S. Dist. LEXIS 197596, at *2-3 (S.D. Fla. Oct. 21, 2020) (dismissing habeas petition for lack of jurisdiction where detainee was

detained in Wakulla County Jail, in Wakulla County, in the Northern District of Florida, because jurisdiction lies in the district of confinement).

In this case, Petitioner is detained at Glades, which is in Moore Haven, Florida. *See* ECF No. 17 at ¶ 2. Moore Haven, Florida, is served by Glades County, which lies in the Middle District of Florida. *See* 28 U.S.C. § 89(b).

B. Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) because he is in expedited removal proceedings.

(i) The expedited removal process

Section 1225(b)(1) is the statutory scheme that governs the expedited removal process and consequent detention. The Supreme Court has explained:

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 . . .)” is deemed “an applicant for admission.” §1225(a)(1). An applicant is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. §§ 1225(b)(1)(A)(i), (iii)(I)-(II). Once “an immigration officer determines” that a designated applicant “is inadmissible,” “the officer [must] order the alien removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

Applicants can avoid expedited removal by claiming asylum. If an applicant “indicates either an intention to apply for asylum” or “a fear of persecution,” the immigration officer “shall refer the alien for an interview by an asylum officer.” §§1225(b)(1)(A)(i)-(ii). The point of this screening interview is to determine whether the applicant has a “credible fear of persecution.” §1225(b)(1)(B)(v).

If the asylum officer finds an applicant’s asserted fear to be credible, the applicant will receive “full consideration” of his asylum claim in a standard removal hearing. 8 CFR § 208.30(f); *see* 8 U. S. C. § 1225(b)(1)(B)(ii). If the asylum officer finds that the applicant does not have a credible fear, a supervisor will review the asylum officer’s determination. 8 CFR § 208.30(e)(8). If the supervisor agrees with it, the

applicant may appeal to an immigration judge, who can take further evidence and “shall make a de novo determination.” §§1003.42(c), (d)(1); see 8 U. S. C. §1225(b)(1)(B)(iii)(III).

Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 109-110 (2020) (citations in original).

The immigration judge, then, may concur with the asylum officer’s determination, and return the case to DHS for removal; or may disagree with the determination, find the alien possesses a credible fear, vacate the order of the asylum officer on the Form I-860, and return the case to the agency for issuance of a Notice to Appear. See 8 C.F.R. §§ 208.30(g)(2), 1208.30(g)(2)(iv)(A), (B). At all relevant times, however, the alien, who is in removal proceedings “for further consideration of the application for asylum” is subject to mandatory detention. See § 235(b)(1)(B)(ii); see also 8 C.F.R. § 1208.30(g)(2)(iv)(B).

(ii) The Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) and is ineligible for bond

Petitioner argues that once removal proceedings are underway, detention authority is governed by 8 U.S.C § 1226(a), which requires access to a bond determination consistent with due process. See (ECF No. 17 ¶¶ 39-41). Petitioner requests a bond hearing or remand for bond hearing or, in the alternative, have the court hold that Petitioner’s detention is governed by 8 U.S.C § 1226(a), entitling Petitioner to a bond hearing upon request. However, Petitioner is ineligible for a bond hearing even after an immigration judge vacated his negative credible fear finding and referred the case for full removal proceedings. See *Matter of M-S-*, 27 I & N Dec. 509 (A.G. 2019)⁵ (“An alien who is transferred from expedited removal proceedings to full removal

⁵ *Matter of M-S-* overruled *Matter of X-K-*, 23 I. & N. Dec. 731 (BIA 2005).

proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (“If an immigration officer determines after that interview that the alien has a credible fear of persecution, the alien *shall be detained* for further consideration of the application for asylum. §1225(b)(1)(B)(ii)”) (emphasis added).

In *Matter of M-S-*, the Board of Immigration Appeals relied on *Jennings* in finding that an individual remains subject to mandatory detention even after being transferred from expedited removal proceedings to full removal proceedings:

In *Jennings v. Rodriguez*, a class of aliens in removal proceedings— including aliens transferred from expedited to full proceedings after establishing a credible fear—argued that the Act did not permit their “prolonged detention in the absence of . . . individualized bond hearing[s].” 138 S. Ct. at 839 (internal quotation marks omitted). The class acknowledged that section 235(b)(1)(B)(ii) provides that a transferred alien “shall be detained for further consideration of the application for asylum.” The class argued, however, that “the term ‘for’ . . . mandates detention only until the start of [full] proceedings.” *Id.* at 844 (emphasis in original). Once those proceedings begin, the class continued, section 236 applies, under which transferred aliens are generally eligible for bond and thus entitled to bond hearings. *Id.* at 845. The Court rejected that argument as “incompatible with the rest of the statute.” *Id.* If the class were right about when sections 235 and 236 apply, “then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the [Secretary] would have to issue an arrest warrant in order to continue detaining the alien.” *Id.* But “that makes little sense.” *Id.*

Matter of M-S-, 27 I & N Dec. at 517.

Although *Rodriguez* did not address the Act’s implementing regulations, those regulations support the conclusion that transferred aliens are ineligible for bond. First, 8 C.F.R. § 208.30(f) provides that, if an alien is either a “stowaway” or in expedited proceedings, and he establishes a credible fear, he must be transferred to, respectively, “proceedings under [8 C.F.R.] § 208.2(c)” or full removal proceedings. In either case, after the transfer, “[p]arole of the alien may be considered only in accordance with section 212(d)(5) of the Act and [8 C.F.R.] § 212.5.” 8 C.F.R. § 208.30(f). The regulation makes no mention of bond.

Id. at 518.

In *Thuraissigiam*, the Supreme Court cited to *Jennings* when reiterating that § 1225(b)(1)(B)(ii) mandates mandatory detention: “Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release. Applicants ‘shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.’ §1225(b)(1)(B)(iii)(IV). Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum applications. §1225(b)(1)(B)(ii); see *Jennings v. Rodriguez*, 583 U. S. ___, ___, ___, 138 S. Ct. 830, 834, 200 L. Ed. 2d 122 (2018).”

Accordingly, the Court should deny Petitioner’s habeas petition because Petitioner is subject to mandatory detention under § 1225(b) despite being in removal proceedings.

GOVERNMENT’S RETURN AS TO PETITIONER, ROSARIO ROBLERO-VELASQUEZ

Respondents by and through the undersigned Assistant United States Attorney hereby file its Response to Petitioner’s Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief [DE 16] (the “Petition”) and request that it be denied stating in support thereof as follows:

I. INTRODUCTION

Petitioner, Rosario Roblero Velasquez (“Petitioner”) attempts to circumvent 8 U.S.C. § 1225(b)(2)(A), the statute under which he is lawfully detained, by virtue of filing this Petition and

requesting that he be released or provided a bond hearing under 8 U.S.C. § 1226(a). *See* [DE 16 ¶ 5]. Petitioner argues that the authority for his detention instead arises under § 1226(a) because § 1225(b)(2)(A) does not apply to individuals like Petitioner, who previously entered and are now residing in the United States.” *See* [DE 16, ¶ 4]. In sum, Petitioner’s position is that the application of § 1225(b)(2)(A) is improper as a matter of law, denies him due process, and violates the Administrative Procedure Act (“APA”). *See* [DE 16, ¶¶ 4, 73, 80]. However, Petitioner falls squarely within the statutory definition of aliens subject to detention under § 1225(b)(2)(A), which is consistent with the Board of Immigration Appeal’s (“BIA”) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).⁶ Petitioner’s entry without inspection to the United States

⁶ Respondents recognize that numerous adverse district court decisions from the Southern District of Florida have been issued with respect to this argument. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that “detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States.); *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility” and finding that “section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”; *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Penagos Quintero v. Ripa, et al.*, Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Martinez v. Field Off. Dir.*, No. 25-26026-CIV-LEIBOWITZ, ECF No. 7 (S.D. Fla. Jan. 14, 2026) (“Pending the Eleventh Circuit’s resolution of this issue, the Court continues to side with the clear weight of existing authority in finding that Petitioner here is entitled to a prompt, individualized bond hearing under 8 U.S.C. § 1226(a)”; *Espinal Encarnacion v. ICE Field Office Director, et al.*, Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”; *Ocegueda Gonzalez v. Noem, et al.*,

as an Unaccompanied Minor (“UAC”) does not alter this analysis. Accordingly, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Guatemala. *See* Ex. A, I-213. On or about October 12, 2018, Petitioner illegally entered the United States without being admitted or paroled as an unaccompanied minor. *See id.* Customs and Border Protection (“CBP”) detained Petitioner and then transferred him to the custody of Office of Refugee Resettlement (“ORR”) who subsequently released him to the custody of his brother. *See* Ex. B, Declaration of Deportation Officer Erasmo Suarez (“Declaration”), ¶ 7 .

On October 12, 2018, CBP filed a Notice to Appear with the Immigration Court alleging that Petitioner was removable based on his illegal entry into the United States without being admitted or paroled. *See* Ex. C, 2018 NTA.

On November 21, 2025, a 287(g) designated law enforcement encountered Petitioner at the Lee County Jail after being arrested during a traffic stop and transferred him into ICE custody on

Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); *Acosta v. Ripa, et. al.*, Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”); and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“Petitioner is being unlawfully detained due to his improper classification as “an alien who is an applicant for admission” pursuant to 8 U.S.C. § 1225(b)(2)(A);] . . .Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”). However, Respondents must preserve this argument for appeal as evinced by the pending appeals nationwide, including before the Eleventh Circuit Court of Appeals. *See e.g., Fidencio Alvarez v. Warden et al.*, No. 25-14065 (11th Cir.). It should also be noted a favorable decision as to the government’s interpretation was more recently entered in *Iraheta Morales v. Kristi Noem, et al.*, No. 25-62598-CIV-SINGHAL (S.D. Fla. Jan. 29, 2026).

November 23, 2025. *See* Ex. A, I-213. A motion for change of venue from the non-detained docket to detained docket was filed by ICE on December 5, 2025. *See* Ex. B, Declaration, ¶ 11. On January 5, 2026, Petitioner went before the immigration judge for a bond hearing. The immigration judge issued a “No Action” decision. *See* Ex. C, Immigration Judge Bond Decision.

Petitioner remains detained at the Krome Service Processing Center. *See* Ex. B, Declaration, ¶ 13. Petitioner’s next hearing before the Immigration Judge is on February 4, 2026. *Id.* at ¶ 14.

III. ARGUMENT

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in the BIA’s Decision in Matter of Yajure Hurtado.

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”).

By its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country

illegally is treated as an ‘applicant for admission’”); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted”). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]” 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection”). An applicant for admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated

[POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Petitioner did not present himself at a POE but instead entered the United States “on or about October 2018, without inspection or admission at or near [an] unknown place”. [DE 16, ¶ 26]. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In *Matter of Yajure Hurtado*, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” 29 I&N Dec. at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are

placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 U.S.C. 1225(b)(1)(B)(ii)(providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien “shall be detained” for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

B. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures

under § 1225(b)(1) or removal proceedings before an immigration judge under § 1229a.; §§ 1225(b)(1), (b)(2)(A). *See Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). For aliens amendable to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an immigration judge under § 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

There is no question that Petitioner entered the United States without admission or inspection, and that he is present in the United States. [DE 16, ¶ 26]. Therefore, Petitioner is an applicant for admission, as defined by § 1225(a)(1), was determined to not be clearly and beyond a doubt entitled to be admitted, and remains in § 1229a removal proceedings, thus subjecting Petitioner to detention under § 1225(b)(2)(A). *See Ex. 6, NTA*, dated February 24, 2022. Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. There is also no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein

refers to “arriving aliens,” or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

C. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in Removal proceedings.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229 and this does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a],” § 1225(b)(2)(A). Petitioner is unlawfully in the United States, and he is not in possession of documentation allowing him to remain here lawfully. Ex. 7. Declaration, ¶ 14. As the Supreme Court explained, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R.

§§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, bond issued under § 1226(a) may be revoked at any time. See 8 U.S.C. § 1226(b); see also 8 CFR 1236.1(c)(9). Lastly, to interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

D. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); see 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. See *Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); see 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; see also *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the

Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security”). Moreover, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; see *Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

E. Petitioner’s Entry without Inspection as an Unaccompanied Minor does not render §1225(b)(2)(a) Inapplicable.

Contrary to Petitioner’s allegations, Petitioner is an “applicant for admission” subject to the removal and detention provisions at § 1225(b)(2) irrespective of his initial entry without inspection to the United States as a UAC. Under the Homeland Security Act of 2002 (“HSA”), a UAC is someone who: “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2) (“Section 279”). The HSA transferred the responsibility for care of UACs in Federal custody by reason of their immigration status to the Office of Refugee Resettlement (“ORR”) within the Department of Health and Human Services (“HHS”). *Id.* § 279(a), (b)(1)(A). The Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), provides that “the care and custody of all unaccompanied alien children, including responsibility for *their detention*, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1) (“Section 1232”). Although the TVPRA

transferred responsibility for care and custody of UACs to ORR, “it did not alter their immigration status.” *Mendez Ramirez v. Decker, et al.*, 612 F.Supp.3d 200, 206 (S.D.N.Y. 2020).

An individual is not a UAC if and when he is released to a parent’s custody. *Id.* Moreover, a UAC ceases to be a UAC when he turns eighteen. *Id.* at 212 (citing 6 U.S.C. § 279(g) (2)(B) and *Matter of Castro-Tum*, 27 I. & N. Dec. 271, 277 n.4 (2018)). Petitioner was not under the age of eighteen at the time of his arrest on or about November 20, 2025, after being detained for a traffic violation. *See* [DE 16, ¶ 25, 31]. Because Petitioner was not a UAC at the time of this arrest, he is in the same position as any “applicant for admission,” as contemplated by 8 U.S.C. § 1225.

Petitioner also challenges his detention by alleging that he is a class action member of the *J.O.P. v. U.S. Dept. of Homeland Security et al.*, No. 8:19-CV-01944-SAG (D. Md), and the settlement agreement reached in that case would afford continued protections to UACs under TVPRA, including placement in § 240 proceedings, and consideration for release from custody. *See* [DE 16, ¶¶ 62, 67]. However, the *J.O.P.* settlement does not prevent detention, but merely requires U.S. Citizenship and Immigration Services (“USCIS”) to take initial jurisdiction over Form I-589s, Applications for Asylum and for Withholding of Removal, filed by class members and render a final decision before a removal order can be executed. *See J.O.P. Settlement Agreement*, No. 8:19-CV-01944-SAG, DE 199-2. Furthermore, USCIS can take initial jurisdiction even in detained settings, should Petitioner seek that form of relief. In the present case, Petitioner has no pending asylum application so as to make the *J.O.P.* settlement applicable. *See* Ex. B, Declaration, ¶ 9.

F. Petitioner's Detention is Not a Violation of Due Process or the APA.

Petitioner asserts that his detention without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. [DE 16, ¶ 73]. The Court should reject such arguments because “detention during deportation proceedings is a constitutionally valid aspect of the deportation process.” *See Demore v. Kim*, 538 U.S. 510 (2003). Additionally, an individualized bond hearing need not be conducted to determine individualized flight risk; instead, detention may be mandated to combat flight. *See id.* at 538 U.S. at 528.

Petitioner also argues that the APA was violated because the “dramatic reversal of past policy without explanation regarding the applications of § 1225 and § 1226 by the Board of Immigration Appeals, raises legal issues under the APA in the following way: the recent decisions by the BIA to abandon decades-old practice of bond hearings under 1226(a) and in violation of Congressional intent and statutes, is a violation of the APA.” [DE 16, ¶ 80]. As a preliminary matter, the APA does not provide jurisdiction to review where there is an alternative statutory remedy. The APA only permits judicial review of an adverse agency decision where no other adequate remedy is available.” *Hogan v. Kerry*, 208 F. Supp. 3d 1288, 1290 (S.D. Fla. 2016); *see* 5 U.S.C. § 704 (“Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” (emphasis added)). By filing a petition seeking habeas relief, Petitioner has another adequate remedy available to him, although such relief is not warranted.

Even if this Court were to consider Petitioner’s arguments under the APA, they must fail as the ongoing evolution of the law regarding applicants for admission in various procedural

postures being subject to detention under § 1225(b) is well supported as previously discussed. Nor does the *J.O.P.* settlement apply to his circumstances so as to render detention impermissible. Therefore, Petitioner's detention is not unlawful, arbitrary, capricious, or otherwise so as to create a viable APA claim. Moreover, if Petitioner seeks to make any challenge to policy or the system, it must be properly brought before the D.C. Circuit, not this Court. *See* 8 U.S.C. § 1252(e)(3)(A).

For the reasons set forth above, the Court should deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/Michele S. Vigilance

Michele S. Vigilance, AUSA