

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALONSO ALFREDO TAPIA RIVEROS,

Petitioner,

v.

Case No. 8:26-cv-206-SDM-CPT

PAMELA BONDI, *et al.*,

Respondents.

**RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE AND
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through undersigned counsel, hereby respond to the Court's January 30, 2026 Order to Show Cause (ECF No. 4) and the Petition for Writ of Habeas Corpus (ECF No. 1), "Petition". Petitioner Alonso Alfredo Tapia Riveros seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings an Administrative Procedure Act ("APA") claim, challenging his detention. His petition must be denied as Petitioner is currently detained under 8 U.S.C. § 1225(b)(2)(A) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which [he/she] is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that, contrary to the plain language of 8 U.S.C. § 1225(b)(2)(A), the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release

on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A).¹

BACKGROUND

Petitioner is an “applicant for admission.” He is a citizen and national of Mexico who entered the United States without admission or parole at an unknown time and location, though he purports to have entered in November 2002.² Hab. Pet., ¶¶ 11, 16. On January 19, 2026, Petitioner was arrested by the Sarasota County Sheriff’s Office for operating a motor vehicle without a driver’s license (third offense). See Probable Cause Affidavit, attached as “Exhibit A.” Charges remain pending. See Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit B” at p. 2. Sarasota County contacted immigration enforcement officials who then assumed custody of Petitioner as he appears to be removable under Section 212 of the Immigration and Nationality Act (“INA”). *Id.* Though originally detained here in Tampa, Florida, Petitioner is presently detained in a detention facility in Florence, Arizona. See Detention History, attached as “Exhibit C.”

¹ The only appropriate respondent to a habeas case is the official with physical custody over Petitioner. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, the only proper respondent in this case is the Warden of the facility in which Petitioner is being detained. See e.g., *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021).

² The Petition states at paragraph 16 that Petitioner entered the United States in 2022, however reading the Petition as a whole, this appears to be typographical error.

On January 23, 2026, Petitioner filed the instant Petition with the U.S. District Court seeking relief pursuant to the APA, INA, and the Fifth Amendment Due Process Clause. *See* ECF No. 1. On January 30, 2026, this Court ordered a response to the Petition no later than February 17, 2026. ECF No. 4.

In response to this Court's order, ECF No. 4, and for the reasons set forth below, Respondents respectfully request that this Court deny the relief sought in the Petition.

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

ARGUMENT

I. The Court Lacks Jurisdiction Over Petitioner's Claims.

Federal courts have limited jurisdiction and "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Further, "APA review does not apply when '(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law.'" *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1306 (11th Cir. 2025) (quoting 5 U.S.C. § 701(a)). In this case, Sections 1252(g) and (b)(9) of the INA divests this Court's jurisdiction to consider Petitioner's claims of unlawful detention.

A. 8 U.S.C. § 1252(g)

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). The law is clear: detaining an alien while a removal determination remains pending constitutes an action taken to commence proceedings. *Gupta*, 709 F.3d at 1065; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021). “By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.”

Alvarez, 818 F.3d at 1203. Here, Petitioner is being detained “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of Section 1252(g), the Court has no jurisdiction. *Id.* The Court must therefore dismiss this action for lack of subject matter jurisdiction.

B. 8 U.S.C. § 1252(b)(9)

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court’s review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”).

The zipper clause's restrictions are broad, but not without limitation. *See e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings). Here, where Petitioner challenges ICE's detention determination—an action arising from its choice to commence proceedings to remove him from the United States—Section 1252(b)(9)'s zipper clause has been triggered and judicial review in this Court is inappropriate and contrary to the statutory scheme.

Finally, Petitioner has not exhausted an important and otherwise available remedy. Federal regulations give the Board of Immigration Appeals appellate jurisdiction over bond decisions rendered by an immigration judge. 8 CFR 1003.1(b)(7). Petitioner has presented nothing to demonstrate that he has pursued redetermination of ICE's bond decision through an immigration judge prior to initiating this action.

II. Petitioner Lacks Standing to Bring Claims Under the APA.

Petitioner 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)).

III. Petitioner’s Detention Under Section 1225(b)(2) is Proper.

At the core of this case is Petitioner’s contention that he has been improperly detained under 8 U.S.C. Section 1225 rather than 8 U.S.C. Section 1226. *See generally* Petition. Respondents contend that Petitioner’s detention is governed by 8 U.S.C. § 1225 consistent with *Matter of Yajure Hurtado* while Petitioner contends that 8 U.S.C. § 1226 applies.

To interpret the relevant parts of the INA, courts first turn to the “plain meaning of the statute.” *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391. If the statutory text is clear—as it is here—the analysis ends there. *Bostock v. Clayton County, Georgai*, 590 U.S. 644, 674 (2020).

The statutory scheme at Section 1225(a) provides that “An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1); *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). An applicant for admission is “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). Applicants for admission generally fall into one of two categories with arriving aliens and those initially determined to have not been admitted or paroled into the United States falling under Section 1225(b)(1), and all other applicants for admission not encompassed by (b)(1) falling within Section 1225(b)(2). *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b). Under Section 1225(b)(1) aliens are detained for the purpose of removal under an expedited process—still allowing credible fear screening for asylum where applicable—whereas under Section 1225(b)(2), the “alien shall be detained for a proceeding under section 1229a” after “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Thus, read most naturally, these subsections mandate detention of applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.

The alternate statutory provision Petitioner argues applies, Section 1226, governs apprehension and detention of aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). It applies to aliens who are deportable under 8 U.S.C. § 1227(a), including those “who were inadmissible at

the time of entry or who have been convicted of certain criminal offenses since admission.” *Jennings*, 583 U.S. at 288. Under Section 1226, aliens fall into one of two categories with those arrested on a warrant issued by DHS eligible for bond, and those who have committed or been convicted of certain crimes subject to mandatory detention. *Id.* at § 1226(a), (c). The appropriate statutory provision for a particular alien thus turns on whether he is an applicant for admission—subject to Section 1225—or inadmissible at the time of entry—subject to Section 1226.

Here, looking at the plain meaning of the statutes, ICE has properly detained Petitioner—an applicant for admission—under Section 1225(b). Petitioner entered without inspection. Petition, ¶ 16. Detention under these circumstances is therefore not unlawful, rather, it is statutorily required. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV); 1225(b)(2)(A). Admittedly, this application of the statute remains unsettled in the Eleventh Circuit³—and nationwide for that matter⁴—with little clarity at the appellate

³ At least five circuits have taken this issue up on appeal with only one having issued a decision thus far. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) (finding in favor of the government); *see also Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.). Importantly, the Eleventh Circuit is slated to hear oral argument on this issue in April. *See Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

⁴ Numerous Courts have adopted positions substantially similar to that taken by Respondents here. *See Perez Ramirez v. Holt*, No. 2:25-cv-00156-SCM, 2026 WL 226964, at *2-7 (E.D. Ky. Jan. 28, 2026); *Vidal Alvacora v. Olson*, No. 0:26-cv-00675-DMT-SGE, 2026 WL 220417, at *1-3 (D. Minn. Jan. 28, 2026); *Qiwei Weng v. Genalo*, No. 25 Civ. 09595 (JHR), 2026 WL 194248, at *3-6 (S.D.N.Y. Jan. 25, 2026); *Hernandez v. Olson*, No. 25-cv-1670-bhl, 2026 WL 161509, at *3-7 (E.D. Wis. Jan. 21, 2026); *Singh v. Albarran*, No. 1:26-cv-00244-WBS-CSK, 2026 WL 124881, at *1-2 (E.D. Cal. Jan. 16, 2026); *J.E.P.M. v. Wofford*, No. 1:26-cv00316-WBS-CKD, 2026 WL 125270, at *1 (E.D. Cal. Jan. 16, 2026); *Martinez v. Villegas*, No. 1:25-CV-256-H, 2026 WL 114418, at *3-8 (N.D. Tex. Jan. 15, 2026); *Sargsyan v. Bondi*, No. 1:26-cv-00259-WBS-CKD, 2026 WL 114665, at *1-2 (E.D. Cal. Jan. 15, 2026); *Cutiopala v. Noem*, No. 1:25-cv-00211-MAL, 2026 WL 113567, at *2-5 (E.D. Mo. Jan. 15, 2026); *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761, at *7-14 (S.D.N.Y. Jan. 14, 2026); *Choudhary v. Albarran*, No. 1:26-cv-00119-WBS-CKD, 2026 WL 102708, at *2 (E.D. Cal. Jan. 14, 2026); *Singh v. Noem*, No. 1:26-cv-00224 WBS CSK, 2026 WL 91787, at *2 (E.D. Cal. Jan. 13, 2026); *Singh v. Noem*, No. 2:25-cv-00157-

level to date. And here in the Middle District of Florida, decisions have tipped heavily in Petitioner's favor.⁵ Still, even Courts disagreeing with Respondents' position note

SCM, 2026 WL 74558, at *3-7 (E.D. Ky. Jan. 9, 2026); *Garibay Robledo v. Noem*, No. 1:25-cv-00177-H, 2026 WL 81679, at *3-9 (N.D. Tex. Jan. 9, 2026); *Rodriguez v. Olson*, No. 1:25-cv-12961, 2026 WL 63613, at *5-8 (N.D. Ill. Jan. 8, 2026); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *3-5 (W.D. Okla. Jan. 6, 2026); *Gomez Hernandez v. Lyons*, No. 1:25-CV-216-H, 2026 WL 31775, at *2-8 (N.D. Tex. Jan. 6, 2026); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *1-4 (E.D. Wis. Dec. 8, 2025); *Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at *2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2-10 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJCBW, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at *4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657, at *1-2 (E.D. Va. Aug. 5, 2025).

⁵ See E.g., *Perez Ajtum v. Hardin et al*, 2:26-cv-00057-SPC-DNF (M.D. Fla.) (Doc. 7); *Jimenez-Mazariegos v. Warden*, No. 2:26-cv-59-JES-NPM (M.D. Fla.) (Doc. 7); *Vilorio Moncada v. Warden*, No. 2:26-cv-33-JES-DNF (M.D. Fla.) (Doc. 10); *Alonzo Izaguirre v. Warden*, No. 2:26-cv-48-SPC-DNF (Doc. 7); *Landaverde Garcia v. Ripa et al.*, No. 2:26-cv-8-KCD-DNF (Doc. 9); *Giron Bautista v. Sec'y, DHS, et al.*, No. 2:26-cv-75-JES-DNF (Doc. 11); *Vasquez-Vail v. Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement (Collier)*, 2:26-cv-81-JES-NPM (Doc. 11); *Munoz Avendano v. Warden*, No. 2:25-cv-1221-SPC-NPM (Doc. 10); *Jacobo v. Warden*, No. 2:25-cv-1190-KCD-NPM (Doc. 6); *Salinas v. Warden*, No. 2:25-cv-1196-KCD-DNF (Doc. 8); *Gallardo v. Glades Detention Facility*, 2:25-cv-1193-JES-DNF (Doc. 5); *Dixon v. Warden*, No. 2:25-cv1067-KCD-DNF (Doc. 12); *Lopez Arevalo v. Warden*, No. 2:26-cv-18-SPC-DNF (Doc. 15); *Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (Doc. 13); *Oldin Gonzalez v. Hardin*, No. 2:25- cv-1227-JES-DNF (Doc. 7); *Melgar v. Secretary*, No. 2:25-cv-1002-JES-DNF (Doc. 12); *Cruz-Ros v. Warden*, No. 2:25-cv-1006-JES-NPM (Doc. 9); *Tomas v. Warden*, No. 2:25-cv-1117-JES-DNF (Doc. 18); *Elizalde Ortiz v. Mordant et al.*; No. 2:25-cv-01160-JES-DNF (Doc. 7); *Padilla Orellana v. Warden*, No. 2:25-cv-1195-SPCNPM (Doc. 13); *Garcia Raya v. ICE*, No. 2:25-cv-1109-KCD-DNF (Doc. 7); *Rosas v. Noem*, No. 2:25-cv-1062- JES-NPM (Doc. 12); *Valle Ortiz v. Warden*, No. 2:25-cv-1114-KCD-DNF (Doc. 16); *Martinez Rios v. Ripa*, No. 2:25-cv-1090-KCD-DNF (Doc. 9); *Rafael Gonzalez v. Warden*, No. 2:25-cv-1047-KCD-DNF (Doc. 17); *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR (Doc. 14); *Bravo-Diaz v. Mordant*, No. 2:25-cv-1013-JES-DNF (Doc. 10); *Martinez Chavez v. Ripa*, No. 2:25-cv-1088-KCD-DNF (Doc. 10); *Reyes Rodriguez v. Warden*, No. 2:25-cv-1012-JES-DNF (Doc. 11); *Rafael Avalos v. Hardin*, 2:25-cv-1008-KCD-DNF (Doc. 16); *Valentin Gonzalez Hernandez v. Bondi*, 2:25-cv-1082-SPC-NPM (Doc. 8); *Cetino v. Hardin*, No. 2:25- cv-1037-JES-DNF (Doc. 12); *Hernandez Perez v. Warden*, 2:25-cv-1052-KCD-NPM (Doc. 13); *Cervantes Orellana v. Noem*, No. 2:25-cv-1038-KCD-NPM (Doc. 20); *Castillo-Castro v. Secretary, DHS*, No. 2:25-cv-1045- KCD-DNF (Doc. 16); *Flores Castizo v. Warden*, No.

that the “statutory interpretation issue is difficult and close.” *Ahmed v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026).

Petitioner’s argument that Section 1252(b)(2) does not apply to him given his lengthy unlawful presence in the United States is not compelling. *See* Petition, ¶ 40. The plain language of the statute does not support this conclusion, and where the statutory text is clear, the analysis ends. *See King v. Burwell*, 576 U.S. 473, 486 (2015). Section 1225(b) is unambiguous. There are no qualifiers, nor any temporal limitations. *See* 8 U.S.C. § 1225(b)(2). And such time limitations indeed appear in other parts of the same statute, significant here because where Congress includes particular language in one part of a statute but omits it in another, there is a presumption that Congress acted intentionally. *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1168 (11th Cir. 2003). By way of example, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—enacted contemporaneously with Section 1225(b)(2)—applies a two-year continuous physical presence in the United States requirement. Under these principles, the Court cannot read a “period of residence” requirement into Section 1225(b)(2) because it simply is not there, a reflection of Congressional intent not to include it. *See Germain v. U.S. Att’y Gen.*, 9 F.4th 1319, 1325 (11th Cir. 2021 (*citing Russello v. United States*, 464 U.S. 16, 23, (1983))).

2:25-cv-1087-SPC-DNF (Doc. 8); *Luis Perera v. Bondi*, 2:25-cv-1054-SPC-NPM (Doc. 10); *Garcia Riquis v. Warden*, No. 2:25-cv-1028-SPC-NPM (Doc. 8); *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM (Doc. 22); *Jose Erazo v. Hardin*, No. 2:25-cv-891-KCD-DNF (Doc. 19); *Norman Paxtor Alvarez v. Ripa*, No. 2:25-cv-964-KCD-NPM (Doc. 9); *Hernandez Lopez v. DHS*, No. 2:25-cv-830-KCD-NPM (Doc. 31); *Hinojosa Garcia v. DHS*, No. 2:25-CV-879-SPC-NPM (Doc. 18); *Vasquez Carcamo v. DHS*, No. 2:25-cv-922-SPC-NPM (Doc. 10).

An applicant for admission's period of residence is irrelevant under a plain reading of the statute. In making a detention determination, the statute requires ICE to consider an alien's manner of entry, not his period of residence in the United States. *See* 8 U.S.C. § 1225(a)-(b). Legislative intent bolsters' this interpretation. The statutory scheme that 8 U.S.C. §§ 1225 and 1226 replaced was such that aliens who entered the United States undetected retained certain benefits—such as the availability of bond—where those who presented themselves at the border did not.

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

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Recognizing that such a scheme incentivized evasion over presenting oneself at a port of entry, Congress set out to restructure the law to distinguish between deportation—applicable to aliens previously admitted—and removability—applicable to those present without admission. *Id.* at 226. With the enactment of the statutory provisions now applicable, aliens who, under the prior scheme, entered surreptitiously only to benefit from additional legal benefits in immigration proceedings now fall “[u]nder the new ‘admission’ doctrine” and “such aliens will not be considered to have been admitted . . .”. *Id.* Accordingly, Petitioner—who did not present himself for inspection—has not been admitted and should indeed fall under Section 1225.

CONCLUSION

The Court lacks jurisdiction to consider Petitioner's claims, but even were that not the case, his detention is lawful. Accordingly, there has been no violation under the APA, Due Process Clause, or the INA. Respondents respectfully request that this relief be denied.

DATED: February 17, 2026

Respectfully submitted,

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