

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MILITZA ANAIS SANCHEZ,	)	CASE NO.: 3:26-CV-00250
	)	
Plaintiff,	)	JUDGE DAVID A. RUIZ
	)	MAGISTRATE JUDGE GRIMES
v.	)	
	)	
WILLIAM J. CUNNINGHAM, Seneca	)	<u>RESPONSE TO PETITION FOR WRIT OF</u>
County Jail Administrator, et al.,	)	<u>HABEAS CORPUS</u>
	)	
Defendants.	)	

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QUESTION PRESENTED

Whether an applicant for admission to the United States is properly detained under a statute that mandates detention for all applicants for admission.

SUMMARY OF THE ARGUMENT

Petitioner is an applicant for admission to the United States, regardless of how long she has been present in the country. She is therefore required to be detained under 8 U.S.C. § 1225.

Petitioner Militza Anais Sanchez (“Petitioner”) seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of her detention by Immigration and Customs Enforcement (“ICE”). She seeks her immediate release from custody or an Order directing the Immigration Court to hold a bond hearing within three days. Because this Court lacks jurisdiction, Petitioner is properly detained under 8 U.S.C. § 1225, Petitioner’s due process rights have not been violated, Petitioner failed to exhaust her administrative remedies, and Petitioner’s claimed *Accardi* Doctrine violation cannot be brought in a habeas, her petition must be denied.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

The Petition states that Petitioner entered the United States on August 1, 2025. Dkt. #1, ¶ 1, PageID# 3. Petitioner alleges she was detained following an ICE worksite operation but does not state the date her detention began. *Id.*, ¶ 2. Seneca County Sheriff’s Department 287g Task Force encountered Petitioner on January 7, 2026. Form I-213, attached as Ex. A. On January 8, 2026, Petitioner was issued a Notice to Appear indicating that she was an alien present in the United States who had not been admitted or paroled. Notice to Appear, attached as Ex. B. On January 9, 2026, Petitioner filed a Motion for Custody Redetermination. Dkt. #1, ¶ 3, PageID# 3, 9. On January 20, 2026, the Immigration Judge denied the request for custody status. ECF#1, ¶ 4 PageID# 3. Petitioner reserved her right to appeal to the Board of Immigration Appeals, and any such appeal was due February 19, 2026. *Id.*, Attach.2, PageID# 17-19. Although Petitioner

¹ A writ of habeas corpus may only be issued by the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, Jail Administrator William Cunningham, Secretary Noem, and Attorney General Bondi are not proper respondents. *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, at *8 (N.D. Ohio Nov. 12, 2025).

indicated she may seek relief in the form of a potential claim for asylum (Dkt. 1, PageID# 12), she did not file any application for relief or protection from removal within the time limit. Order of Immigration Judge, attached as Exhibit C. Petitioner's removal hearing occurred on February 17, 2026. *Id.* At the hearing, Petitioner admitted the allegations in the Notice to Appear. Exhibit B. Petitioner was ordered removed from the United States on February 17, 2026. Order of Immigration Judge, attached as Ex. C. Petitioner reserved the right to appeal, and any appeal is due on March 19, 2026. *Id.*

II. ARGUMENT

A. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)

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 (“PFR”) 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.* Moreover, a PFR is the only means for judicial review of immigration proceedings.

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

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)

(emphasis in original); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *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.”).

Recently, the Third Circuit in *Khalil v. President, United States*, __ F.4th __, 2026 WL 111933 (3d Cir. Jan. 15, 2026), citing *AADC* and circuit precedent, held that Section 1252(b)(9) bars subject matter jurisdiction over habeas claims arising from actions to remove an alien, including those where the injury cannot be remedied after the fact – such as alleged illegal detention claims. 2026 WL 111933, at *9. To avoid getting channeled to petition for review, “A now-or-never claim must raise legal or factual *questions* that a court of appeals will not later be

able to review meaningfully on a PFR;” “a claim must raise now-or-never *questions*, not now-or-never harms.” *Id.* (citing *Tazu*, 975 F.3d at 299). And as another Judge in this Court held:

[A] constitutional challenge to detention pending removal and entitlement to a bond hearing collapse into analysis of the statutory and regulatory regime—whether, for example, Section 1226(a) entitles an alien to bond pending removal or whether Section 1225(b) authorizes the government to detain an alien. Congress has made clear that district courts lack the jurisdiction to make such determinations, even on a habeas petition under Section 2241.

Amaya-Velis v. Raycraft, ___ F. Supp. 3d ___, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026) (citing 8 U.S.C. § 1252(b)(9)); *see also Munoz Nataren v. Raycraft, et al.*, No. 4:26-cv-212, 2026 WL 214368 (N.D. Ohio Jan. 28, 2026) (dismissing the petition for lack of jurisdiction).

Similarly, 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 her, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024). 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. 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 her claims before the appropriate court of appeals because she challenges the government's decision or action to detain her, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225

Federal immigration law classifies all aliens. Aliens who enter the United States, and who have not been admitted, are applicants for admission and are aliens seeking admission pursuant to statute and legal precedent. *Buenrostro-Mendez v. Bondi, et al.*, __ F. 4th __, 2026 WL 323330 (5th Cir. Feb. 6, 2026). "Presence without admission deems the petitioners to be applicants for admission." *Id.*, at *4 (citing 8 U.S.C. § 1225). In addressing the petitioners' argument that they are not "seeking admission" because "'seeking admission' refers only to those aliens who are actively pursuing lawful entry and submitting themselves to inspection by an immigration officer" the court stated:

The text and context of § 1225 contradict the petitioners' reading of the statute. A proper reading begins with the ordinary meaning of the language in § 1225(b)(2)(A). "There is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something." *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, __ F.Supp.3d __, __, 2026 WL 81679, at *5 (N.D. Tex. Jan. 9, 2026). When a person applies for something, they are necessarily seeking it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (to someone for something)"), *with id.* at 1299 ("seek" means "to request, ask for"); *see also* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or seek employment, acceptance, or admission"). Just as an applicant to a college seeks admission, an applicant for admission to the United States is "seeking admission" to the same, regardless whether the person actively engages in further affirmative acts to gain admission. The everyday meaning of the statute's terms confirms that being an "applicant for admission" is not a condition independent from "seeking admission."

The petitioners first respond that "seeking" is in the present tense, and it thus requires some form of present, affirmative action. Once again, the ordinary meaning of the terms suggests otherwise. Return to the example of the college applicant. It would make no sense to say that as soon as the applicant clicks

“submit” on her application, she is no longer seeking admission, merely because she does not take any further affirmative steps to gain admittance. Instead, she would ordinarily be understood to be seeking admission as long as her application is pending. The same is true here. The petitioners are deemed, by statute, to be applicants for admission pending the resolution of removal proceedings. While they remain applicants, they are presently seeking admission. That “seeking admission” is equivalent to being an “applicant for admission” by operation of law was confirmed by the BIA over a decade ago in *Matter of Lemus-Losa*, 25 I&N Dec. 734, at 743 (2012).

Id., at *4-5 (footnotes omitted). The manner in which an alien enters the United States determines his or her status, regardless of the amount of time spent in the United States. Therefore, they are subject to detention under 8 U.S.C. § 1225. *Id.*

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225

“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)); *Buenrostro-Mendez*, 2026 WL 323330, at *4; *Lopez v. Dir. Of Enf’t and Removal Operations*, __ F. Supp. 3d __, 2026 WL 261938, *1 (M.D. Fla. Jan. 26, 2026) (the “Court must faithfully interpret and apply the relevant statutes; it is not [the] Court’s role to evaluate or second-guess Congress’s policy choices, as reflected in the statutory text.”). 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). Accordingly, 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) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (quoting 8 U.S.C. § 1225(a)(1))); *Buenrostro-Mendez*, 2026 WL 323330, at *4; *Gutierrez Sosa v. Holt*, Case No. CIV-25-1257, 2026 WL 36344, at *4 (W.D. Okla. Jan. 6, 2026) (“And once deemed an “applicant for admission,” an alien is

necessarily “seeking 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). 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).

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, inter alia, expedited removal procedures under 8 U.S.C. § 1225(b)(1) or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”).

Here, Petitioner did not present herself at a POE but instead entered the United States in August 2025, without having been admitted after inspection by an immigration officer. *See* Exhibit B: Notice to Appear, page 4 (stating that Petitioner is subject to removal under INA § 212, 8 U.S.C. § 1182(a)(6)(A)(i), (a)(7)(A)(i)(I)). Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission. *Buenrostro-Mendez*, 2026 WL 323330; *see also Gonzalez v. Ladwig*, No. 2:26-cv-02017, 2026 WL 413602, at *5 (W.D. Tenn. Feb. 13, 2026) (“all “applicants for admission” are “seeking admission””).

2. Applicants for admission in 8 U.S.C. § 1229a removal proceedings are detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

Applicants for admission, such as Petitioner, whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an

IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing.

Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 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 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings “*shall be detained*.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. No provision within 8 U.S.C. §

1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). 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).

In *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 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))).

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien present without admission.

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. She is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. “It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine conditions of custody is set forth in 8 C.F.R. §

1236.1(d)” *Id.* at 46. The regulation clearly states that “the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5).]”).

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission. *See also Buenrostro-Mendez*, 2026 WL 323330, at *5-6; *Lucero v. Field Office Dir. of Enf’t and Removal Op., et al.*, Case No. 1:25-cv-823, 2025 WL 3718730, at *4 (S.D. Ohio Dec. 23, 2025) (citing *Jennings*, 583 U.S. 281; *Coronado v. Sec., Dept. of Homeland Sec., et al.*, Case No. 1:25-cv-831,

2025 WL 3628229 (S.D. Ohio Dec. 15, 2025)) (“the statutory phrase “aliens seeking admission” does not refer to a *subset* of “applicants for admission,” but rather is just another way to refer to that same group”).

Coronado contains a detailed analysis of the distinctions in § 1225 and § 1226. 2025 WL 3628229. In the *Coronado* court’s words, “applicants for admission as a textual matter fall within § 1225(b)(2),” whereas “an applicant for admission includes any ‘alien present in the United States who has not been admitted.’” 2025 WL 3628229, at * 8, 12. And “‘admission’ specifically means *lawful* entry[.]” *Id.*, at *7. Also, no “examining immigration officer” has decided that the alien “is not clearly and beyond a doubt entitled to be admitted,” citing 8 U.S.C. § 1225(b)(2)(A). *Id.*, at *8. Simply said, “if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate.” *Id.*, at *10; *see also Lucero*, 2025 WL 3718730; *Phurtskhvanidze v. Field Off. Dir. of Enf’t and Removal Op.*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026); *Gonzalez*, 2026 WL 413602, at *8.

No additional step is necessary for an applicant for admission to be seeking admission. *Buenrostro-Mendez*, 2026 WL 323330, at *4 (“[A]n applicant for admission to the United States is ‘seeking admission’ to the same, regardless whether the person actively engages in further affirmative acts to gain admission.”). As the Southern District of Ohio recently explained, “the phrase ‘alien seeking admission’ in § 1225(b)(2)(A) is merely another way to refer to ‘applicant[s] for admission,’ and thus the same ‘deeming’ that makes someone an applicant for admission also makes them an ‘alien seeking admission,’ whether that is so as a matter of fact or not.” *Lucero*, 2025 WL 3718730, at *1. Likewise, as the Western District of Oklahoma recently noted: if not seeking admission, then what would the legal status be? *Gutierrez Sosa*, 2026 WL 36344, at *4. And to have aliens who have been present in the United States for an extended period of time

would “create[] a regime that *rewards* those aliens who evade deportation for long enough by making them no longer subject to automatic detention when caught.” *Id.*; *Higareda-Cano v. Noem*, No. 1:25-CV0225-H, 2026 WL 274495, *1 (N.D. Tex. Jan. 30, 2026) (“The INA, unsurprisingly, does not bestow heightened procedural protections to illegal aliens based on their stealth and impenitence.”).

Furthermore, Section 1225(a) defines “applicant for admission” to encompass an alien who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1); *Buenrostro-Mendez*, 2026 WL 323330, at *4; *Higareda-Cano*, 2026 WL 274495, at *6 (referring to the “unambiguous” text of the statute that an alien present who has not been admitted is an applicant for admission). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Section 1225(a) provides that “[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner . . .” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that any alien who is an “applicant for admission” *is* “seeking admission” for purposes of Section 1225(b)(2)(A). *See Chen v. Almodovar*, 25 Civ. 9670, 2026 WL 100761, at *9 (“an applicant for admission is someone

who, under the statute, is necessarily seeking admission”) (citing *In re Lemus Losa*, 25 I. & N. Dec. 734, 741-44 (BIA 2012)); *Buenrostro-Mendez*, 2026 WL 323330, at *5 (“The petitioners are deemed, by statute, to be applicants for admission pending the resolution of removal proceedings. While they remain applicants, they are presently seeking admission.”).

“Seeking admission” is thus “a term of art” that includes not only aliens who “entered the United States with visas or other entry documents before their presence became lawful” but also aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §] 235(a)(1)” *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012). As a result, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining the appropriate travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be “*again seek[ing]* admission” to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of law.” *Id.*

To be sure, the Government previously operated under a different understanding of Section 1225(b)(2)(A), such that aliens present in the United States who had entered without admission instead were detained under Section 1226(a). *But see* 8 C.F.R. § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings “in accordance with [INA §] 235(b)(2)”). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected

longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). The *Buenrostro-Mendez* court discussed *Pereira* in concluding that past practices does not invalidate statutory text.

[T]he government's past practice has little to do with the statute's text. The text says what it says, regardless of the decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111, 201 L.Ed.2d 433 (2018).

In *Pereira*, the court considered whether notices to appear for removal proceedings under 1229(a) had to specify the time and place of removal proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite twenty-one years during which the government consistently served notices to appear that omitted time and place information, the court rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct. at 2111, 2114. The same approach is appropriate here. Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls.

In any event, that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more. . . .

2026 WL 323330, at *8. Thus, a court always must interpret the statute “as written.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019); *see Mejia Olalde*, No. 25-cv-168, 2025 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as “nontextual” and unsupported by any “thorough, reasoned analysis”); *Rojas*, 2025 WL 3033967, at *9 (“Prior administrations’ generous interpretation of these laws . . . do not and cannot rewrite it.”). Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission; and is therefore, subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

3. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole.

Importantly, applicants for admission may only be released from detention if DHS invokes

its discretionary parole authority under 8 U.S.C. § 1182(d)(5). 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 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS’s discretion. *Jennings*, 583 U.S. at 300. Furthermore, the Court stated that the fact that parole is an exception to detention “implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released. *Id.* (emphasis in original). Parole is not a bond hearing, and the two should not be conflated.

4. Section 1226 does not impact the detention authority for applicants for admission.

Section 1226 creates a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).²

C. PETITIONER’S DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED

Petitioner claims that her detention violates the Due Process Clause of the Fifth

² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

Amendment simply because she has been detained and the IJ found he did not have jurisdiction to hold a bond hearing ECF #1, PageID# 4. However, the Due Process Clause provides no relief to Petitioner because mandatory detention under § 1225(b)(2) is constitutionally permissible—particularly where, as here, Petitioner has been detained for a short period of time. In fact, Petitioner’s case has been resolved in immigration court and will be final if she does not appeal. Petitioner’s ample available process in her current removal proceedings demonstrates no lack of procedural due process. Congress simply made the decision to detain him pending removal, which is constitutionally permissible.

The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Denmore v. Kim*, 538 U.S. 510, 522 (2003), the Supreme Court upheld the constitutionality of § 1226(c), which mandates the detention of certain aliens during removal proceedings without access to bond hearings. The Supreme Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Here, Petitioner is being detained for the limited purpose of removal proceedings and determining her removability. Accordingly, her procedural due process claim fails because an alien cannot displace the substantive choice made by Congress to mandate detention pending removal

proceedings with a procedural due process claim. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. And “an alien in [that] position has only those rights regarding admission that Congress has provided by statute.” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Congress has not created any procedural rights to a bond hearing for applicants for admission. See *Jennings*, 583 U.S. at 297. “Read most naturally,” section 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* And the statute says nothing “whatsoever about bond hearings.” *Id.* As stated in *Gonzalez v. Ladwig*, No. 2:26-cv-2017, 2026 WL 413602, at* 11 (W.D. Tenn. Feb. 13, 2026), “[C]onsistent with the statutory definition of ‘applicant for admission’ . . . ‘an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application.’” *Id.* (quoting *Landon v. Plascentia*, 459 U.S. 21, 32 (1982)). Petitioner fails to state a procedural due process claim and her habeas petition should be dismissed.³

D. PETITIONER FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES

While courts in this district have required exhaustion of administrative remedies and dismissed habeas petitions for failure to exhaust, Respondents acknowledge that whether to require

³ Petitioner only raises a procedural due process claim. However, even if Petitioner raised a substantive due process claim, it likewise would not have merit. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Any substantive due process claim therefore fails here because “the through line of history” is that the federal government has “sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Id.* at 911, 912. Indeed, Congress in exercising this “broad power over naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526.

prudential exhaustion is discretionary. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (finding that “judicial discretion governs whether or not exhaustion should be required.”); *see, e.g., Amaya-Velis*, __F.Supp.3d __, 2026 WL100596 (N.D. Ohio Jan. 14, 2026); *Tecum Pastor v. Director of Detroit Field Office, U.S. Immigr. and Customs Enf’t*, __F. Supp.3d __ (N.D. Ohio 2025), 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528 (N.D. Ohio 2025); *Mendoza v. Raycraft*, No. 4:25cv2183, 2025 WL 3157796 (N.D. Ohio Nov. 12, 2025); *Ba v. Director of Detroit Field Office, U.S. Immigr. and Customs Enf’t*, Case No. 4:25-cv-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025); *Laguna Espinoza v. Director of Detroit Field Office, U.S. Immigr. and Customs Enf’t*, Case No. 4:25-cv-02107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-01621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025).

“The general rule is that ‘a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.’” *Mendoza*, 2025 WL 3157796, at *8 (citing *Howell v. INS*, 72 F.3d 288, 291 (2nd Cir. 1995) (quoting *Guitard v. United States Sec’y of Navy*, 967 F.2d 737, 740 (2nd Cir. 1992)); citing *Beharry v. Ashcroft*, 329 F.3d 51, 56 (2nd Cir. 2003)). “Exhaustion of administrative remedies serves numerous purposes, including protecting the authority of administrative agencies, limiting interference in agency affairs, and promoting judicial efficiency by resolving potential issues and developing the factual record.” *Beharry*, 329 F.3d at 56. *See also Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 175-176 (1st Cir. 2016) (noting that exhaustion allows “an agency the first opportunity to apply [its] expertise” and “obviate[s] the need for [judicial] review in cases in which the agency provides appropriate redress.”). Furthermore, because of the jurisdiction-stripping provisions of the immigration statutes, exhaustion should be required before filing a writ

of habeas corpus. *Nataran v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368, *3 (N.D. Ohio Jan. 28, 2026).

Congress provided a robust administrative hearing and appeal process for aliens in removal proceedings. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Petitioner should be required to avail herself of those proceedings before filing suit in federal court. Neither Petitioner's likelihood of success at the administrative level, nor the fact that Petitioner is detained, has any bearing on the exhaustion analysis. *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25-CV-1621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025) (requiring exhaustion despite the "high probability of denial of Petitioner's appeal" and the purported "irreparable harm to Petitioner as she has already been detained for more than 80 days"). "[T]he alleged probability that a petitioner's argument in administrative proceedings may fail is 'not tantamount to stating that it would be futile to raise it.'" *Id.* (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). And the risk of irreparable harm due to continued detention does not outweigh the importance of administrative exhaustion. *Id.*

Here, Petitioner has not availed herself of the administrative remedies available to her. An IJ entered an order denying release on January 20, 2026. *See* ECF #1, Attach. 2. Petitioner is permitted to file an appeal of that decision with the BIA, and any such appeal was due on February 19, 2026. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Petitioner filed this Petition before filing an appeal with the BIA and has, therefore, failed to exhaust administrative remedies. Therefore, this Court should require Petitioner to exhaust her administrative remedies and dismiss this Petition.

E. PETITIONER CANNOT BRING AN ACCARDI VIOLATION CLAIM IN A HABEAS PETITION

Petitioner improperly attempts to shoehorn an ancillary claim into a habeas action. ECF

#1, PageID # 4. She alleges that “EOIR’s refusal to exercise custody-redetermination authority mandated by 8 C.F.R. § 1226(a) constitutes an *Accardi* violation.” *Id.* The agency’s action is not in violation of the *Accardi* Doctrine. As discussed above, Petitioner is currently being detained consistent with the INA and its implementing regulations. Furthermore, other civil claims are not properly combined with a habeas action.

It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the agency policies governing it. *Munaf v. Green*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention.”) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004)); *Hamama v. Adducci*, 912 F.3d 869, 875-76 (6th Cir. 2018) (holding that habeas relief is limited to a challenge to detention); *Hernandez Meza v. LaRose*, No. 4:18CV2743, 2019 WL 233616, at *3 (N.D. Ohio Jan. 16, 2019) (“According to *Hamama*, the relief available under the common-law writ is confined to ‘release from custody.’”). And, as a prudential matter, courts in this circuit have not permitted “combined habeas corpus and other civil claims to proceed together in one case.” *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at *7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *report and recommendation adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at *2 (W.D. Mich. Aug. 12, 2020), *aff’d*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions “have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage.” *Ruza*, 2020 WL 4670556, at *2. Thus, Petitioner’s claim of a violation of the *Accardi* Doctrine is improperly pleaded, and the Court should not consider it alongside her petition for writ of habeas corpus.

III. CONCLUSION

For the foregoing reasons, the Petition should be dismissed.

Respectfully submitted,

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PAGE LIMIT CERTIFICATION

The foregoing Response to Petition for Writ of Habeas Corpus is twenty (20) pages and complies with the page limits for an unassigned track.

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