UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE ISAAC AREINAMO-COLMENARES,

Petitioner,

v. Case No. 26-cv-861

DALE J. SCHMIDT, *et al.*,

Respondents.

**RULE 72(b) WRITTEN OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (ECF 6)**

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b)(2), the United States, as an interested party, hereby respectfully files its objection to the Recommendation and Order ("R&O") issued on May 29, 2026 (ECF 6.)[1] As explained below, this Court should reject the Magistrate Judge's conclusion that 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention authority does not apply to Petitioner. Because Petitioner is properly detained pursuant to § 1225, this Court should further deny Petitioner's request for habeas relief.

## INTRODUCTION

In the R&O, the Magistrate Judge recommended that the Court grant Petitioner's petition for habeas corpus and order Respondents to provide him with a bond hearing or release him under appropriate conditions of supervision. Regrettably, the United States (and respondent Schmidt) failed to file any response to the petition prior to the Magistrate Judge's issuance of the

[1] The Office of the United States Attorney for the Eastern District of Wisconsin does not represent Respondent Dale Schmidt, the Dodge County Sheriff, who is a county constitutional officer elected by the people of Dodge County, Wisconsin. However, counsel for the jail custodians have authorized the undersigned to state they join in this answer and do not intend to submit a separate response.

R&O. The United States apologizes for its inadvertent failure to respond. Notwithstanding the government's mistake, this Court "retains authority to make the final determination" and should decide *de novo* whether habeas relief is warranted here. *Delgado v. Bowen*, 782 F.2d 79, 82 (7th Cir. 1986) (per curiam).

Turning to the merits, the United States respectfully asks that the Court reject the R&O and rule that Petitioner is properly detained pursuant to the mandatory detention provision in 8 U.S.C. § 1225(b)(2)(A). Petitioner is a noncitizen who entered the United States without inspection more than five years ago. (ECF 1 at ¶ 2.) Petitioner was apprehended after his unauthorized entry and released on an order of recognizance. (Gilgannon Dec., ¶ 2, Ex. 1, pp. 2-3). Following several traffic offenses and an arrest for failure to appear in early 2026, however, he was arrested by Immigration and Customs Enforcement ("ICE") officials and transferred to the Dodge County Jail in Juneau, Wisconsin, where he remains detained pending his removal proceedings. (ECF 1 at ¶¶ 5, 10; *see also* Gilgannon Dec., ¶ 2, Ex. 1 at p. 3.) In the R&O, the Magistrate Judge recommended granting Petitioner's request for a bond hearing "[b]ecause Areinamo-Colmenares should not be subject to mandatory detention under 8 U.S. C. § 1225(b)(2)(A)." (ECF 6, at p. 5.)

The R&O's conclusion that Petitioner is not properly detained pursuant to § 1225(b)(2)(A) is wrong. As set forth below, because Petitioner was never lawfully admitted into the United States, he is deemed an "applicant for admission" under 8 U.S.C. § 1225(a)(1) and, therefore, is subject to mandatory detention under § 1225(b)(2)(A). This Court has already affirmed the government's interpretation of the Immigration and Nationality Act ("INA")'s detention provisions in *Cirrus Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), *Espinoza Hernandez v. Olson*, No. 25-CV-1670-BHL, 2026 WL 161509

(E.D. Wis. Jan. 21, 2026), and *Moran Rayo v. Olson*, No. 25-cv-2064-bhl, 2026 WL 594079 (E.D. Wis. Mar. 3, 2026). Petitioner raises no argument mandating a different result here. Nor have this Court's decisions been superseded by either the Seventh Circuit Court of Appeals or the Supreme Court.[2]

As such, because Petitioner's detention does not exceed the government's broad authority and discretion in immigration matters or deprive Petitioner of due process, the Court should deny relief.

**LEGAL STANDARD**

Fed. R. Civ. P. 72 ("Rule 72") governs civil cases in which the parties have not consented to magistrate judge jurisdiction. *See* General L. R. 72(c)(1). Rule 72 requires that an assigned magistrate judge "enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1). A party may file specific written objections to a magistrate judge's proposed findings and recommendations within 14 days. Fed. R. Civ. P. 72(b)(2). Rule 72 further provides that:

> The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

[2] In the recent *Castanon-Nava* decision, two of the three judges on the Seventh Circuit panel concluded that the court lacked authority to decide the scope of mandatory detention under § 1225 in light of the procedural posture of that case. *Castanon-Nava v. U.S. Dept. of Homeland Security*, 175 F.4th 828, 861 (7th Cir. 2026) (Pryor, J.) (explaining 8 U.S.C. § 1252(f)(1) barred class-wide injunctive relief concerning the scope of § 1225); *id.* at 871 (Kirsch, J.) (same). As the Magistrate Judge correctly noted, the *Castanon-Nava* decision thus does not offer a precedential holding of the Seventh Circuit regarding the meaning of Section 1225(b)(2)(A) to foreign nationals like Petitioner. R&O, ECF 6, at 3. Judge Kirsch's opinion, which concludes that § 1225(b)(2)(A) applies to foreign nationals like Petitioner, is persuasive and should be followed here. *See infra* pp. 7-11.

Fed. R. Civ. P. 72(b)(3).[3] The Seventh Circuit has long held that a district court has authority to conduct *de novo* review of any aspect of the magistrate judge's recommendation, even when no objection was made, because "under the Federal Magistrates Act the judge always retains authority to make the final determination." *Delgado*, 782 F.2d at 82.

A petition for a writ of habeas corpus challenges the legality or constitutionality of the Government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. A petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When reviewing a habeas petition, the court may consider affidavits and documentary evidence, such as records from any underlying proceeding. *Amponsah v. Beth*, No. 18-cv-199, 2018 WL 2944546, at *2 (E.D. Wis. June 12, 2018) (citing 28 U.S.C. §§ 2246, 2247). The court is not required to hold an evidentiary hearing when the petition and answer present only issues of law. *Toe v. Schmidt*, No. 24-cv-13, 2024 WL 493289, at *2 (E.D. Wis. Jan. 18, 2024) (citing 28 U.S.C. § 2243).

## BACKGROUND

Petitioner is a citizen of Venezuela who claims to have entered the United States without authorization in March 2021. (ECF 1 at ¶¶ 1-2.) After being apprehended by immigration authorities close to the border, he was released on his own recognizance. *(Id.*; *see also* Gilgannon Dec., ¶ 2, Ex. 1 at pp. 2-3.) Following several traffic offenses and an arrest for failure to appear occurring in early 2026, on April 23, 2026, Petitioner was served with an I-200 Warrant of Arrest and taken into ICE custody. (*Id.* at pp. 2-3.) Petitioner is currently held at the Dodge County Jail in Juneau, Wisconsin, where he will remain pending completion of his removal proceedings. (*Id.* at p. 2.)

[3] This timeline and procedure are also consistent with Rule 8(b) of the Rules Governing §2254 Cases.

In his removal proceedings, Petitioner has requested relief from removal through an asylum application. (ECF 1 at ¶ 48.) His final merits hearing before an immigration judge is scheduled for June 26, 2026. (Gilgannon Decl., Ex. B.)

Petitioner filed the instant habeas petition on May 15, 2026. (ECF 1.) On May 29, 2026, Magistrate Judge Duffin issued the R&O, in which he recommended that the petition for writ of habeas be granted. (ECF 6.) After noting that "[t]he respondents have failed to respond by the deadline of May 27, 2026," Magistrate Judge Duffin analyzed Petitioner's claim that he was unlawfully detained under 8 U.S. C. § 1225(b)(2)(A). *Id.* The Magistrate Judge concluded that "the plain language of § 1225(b)(2)(A) does not reconcile the use of "applicant for admission" elsewhere in the chapter with the use of "alien seeking admission" employed in the context of mandatory detention. (*Id.* at p. 4.) As a result, even if Petitioner is deemed an "applicant for admission" under the INA, the Magistrate Judge concluded that he was not actively seeking admission and, therefore, not subject to mandatory detention. (*Id.* at pp. 4-5.) The R&O thus recommended that the habeas petition be granted and proposed that the government be ordered to either provide Petitioner with a bond hearing before an immigration judge or release him under reasonable conditions of supervision. (*Id.* at p. 6.)

## ARGUMENT

### I. Notwithstanding the failure of the United States or Schmidt to respond to the Petition before the Magistrate Judge, this Court should decide *de novo* whether to grant habeas relief.

The United States acknowledges that neither the government nor respondent Schmidt filed a response to the Petition in the proceedings in front of the Magistrate Judge. The government apologizes to the Court and the Magistrate Judge for its error. This Court, however, should not adopt the R&O simply because the respondents failed to brief the matter before the

Magistrate Judge. Instead, this Court can and should review the legality of Petitioner's detention under § 1225(b)(2)(A) *de novo*.

As the Supreme Court has explained, district courts may, consistent with Article III of the Constitution, "refer dispositive motions to a magistrate for a recommendation so long as the entire process takes place under the district court's total control and jurisdiction, and the judge exercises the ultimate authority to issue an appropriate order." *Thomas v. Arn*, 474 U.S. 140, 153 (1985). The district court, accordingly, always retains authority to make a *de novo* review of the magistrate judge's recommendation (whether or not any party objects to it) and issue the final decision in a case. *Id.* at 154; *Delgado*, 782 F.2d at 82.

The United States acknowledges that, despite the district court's ultimate authority to decide *de novo* any matter referred to a magistrate judge for a recommendation, a party may, under some circumstances, waive an argument by not presenting it to the magistrate judge. *See United States v. Melgar*, 227 F.3d 1038, 1040 (7th Cir. 2000). Waiver, however, "is a flexible doctrine." *Id.* Waiver typically occurs "when a party intentionally relinquishes a known right." *United States v. Flores*, 929 F.3d 443, 447 (7th Cir. 2019). Here, the government did not make an intentional or strategic decision not to advance an argument in front of the Magistrate Judge, but rather inadvertently failed to provide any response to the Petition at all. None of the usual concerns supporting waiver, moreover, is present here. *See Melgar*, 227 F.3d at 1040 (explaining that failure to raise arguments in front of a magistrate judge may result in waiver if "facts relevant to their resolution will not have been developed" or if "one of the parties may be prejudiced by the untimely introduction of an argument"). This case presents a pure question of law—whether § 1225(b)(2)(A)'s mandatory detention authority applies to Petitioner—and the government's arguments regarding the meaning of § 1225(b)(2)(A) were well known to the

Petitioner and the Magistrate Judge. No one suffered prejudice as a result of the government's inadvertent failure to brief this case before the Magistrate Judge.

In sum, the Court should exercise its authority to conduct *de novo* review of the R&O and determine whether § 1225(b)(2)(A) authorizes Petitioner's detention without a bond hearing.

## II. No Violation of the INA

Petitioner alleges that his detention without bond is not authorized by 8 U.S.C. § 1225(b)(2)(A). Instead, Petitioner alleges that his detention falls under 8 U.S.C. § 1226(a), and, therefore, that he is entitled to a bond hearing. The Magistrate Judge agreed and recommended that Petitioner receive a bond hearing or release with appropriate conditions of supervision. As explained below, the Magistrate Judge's recommendation is wrong, and the Petitioner's detention is authorized by § 1225(b)(2)(A).

The INA deems any foreign national "present in the United States who has not been admitted or who arrives in the United States" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Here, it is undisputed that Petitioner is present in the United States but has not been lawfully admitted, and, therefore, he is an applicant for admission. Section 1225(b)(2)(A), in turn, mandates the detention of any "alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Again, it is undisputed that no immigration officer has determined that Petitioner is clearly and beyond doubt entitled to be admitted, and, therefore, he is subject to § 1225(b)(2)(A)'s mandatory detention authority.

To escape this conclusion, Petitioner argues, and the Magistrate Judge agreed, that Petitioner was not an "alien seeking admission" within the meaning of § 1225(b)(2)(A) because Petitioner was not making "an active and present effort" to obtain lawful admission. R&O, ECF

6 at p. 4. As this Court has previously held, however, § 1225(b)(2)(A)'s use of the phrase "alien seeking admission" does not have the meaning ascribed by the Petitioner or Magistrate Judge. *See Cirrus Rojas*, 2025 WL 3033967, *8; *see also Castanon-Nava*, 175 F.4th at 872 (Kirsch, J.).

When interpreting a statute, we "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). Here, the ordinary meanings of the phrases "applicant for admission" and "seeking admission" are the same. *See Castanon-Nava*, 175 F.4th at 872 (Kirsch, J.); *Avila v. Bondi*, 170 F.4th 1128, 1134 (8th Cir. 2026); *Buenrostro-Mendez*, 166 F.4th 494, 502 (5th Cir. 2026); *Cirrus Rojas*, 2025 WL 3033967, *8. *But see Lopez-Campos v. Raycraft*, 175 F.4th 713, 723 (6th Cir. 2026) (finding that "for a noncitizen to be 'seeking admission' under § 1225(b)(2)(A), the noncitizen must actively be in search of lawful entry into the United States via inspection and authorization by an immigration officer."); *Cunha v. Freden*, 175 F.4th 61, 69 (2d Cir. 2026) (finding that Section 1225(b)(2)(A) "does not apply to noncitizens...who are present in the United States after entering the country without inspection and admission...).

As the Fifth Circuit explained in *Buenrostro-Mendez*, the dictionary definitions of the words "apply" and "seek" are identical because both mean "to request" or ask for something. 166 F.4th at 502 (quoting Webster's New World College Dictionary 69, 1299 (4th ed. 1999)). Thus, "just as an applicant to a college seeks admission, an applicant for admission to the United States is 'seeking admission' to the same, regardless of whether the person actively engages in further affirmative acts to gain admission." *Id.*

In *Avila*, the court also explained that the wording and structure of § 1225(b)(2)(A) does not indicate that "seeking admission" is a separate requirement for detention under the statute.

*Avila*, 170 F.4th at 1134. As § 1225(b)(2)(A) states, an applicant for admission must be detained "if the examining immigration officer determines that an alien seeking admission is not clearly . . . entitled to be admitted." In context, the most natural reading of this sentence is that the phrase "seeking admission" is just another way of describing an applicant for admission. *Avila*, 170 F.4th at 1134. *See also Cirrus-Rojas*, 2025 WL 3033967, at *8 (noting that "this language is best read as simply another way of referring to aliens who are applicants for admission" and that an alternative interpretation "would pack a lot of meaning into what appears to be an alternate phrasing."). Hence, the argument that the Government's interpretation of § 1225(b)(2)(A) renders the phrase "seeking admission" superfluous is unavailing. *Avila*, 170 F.4th at 1135.

Because the phrase "applicant for admission" is synonymous with "seeking admission," all applicants for admission are subject to mandatory detention under § 1225(b)(2)(A). Again, it is undisputed that Petitioner has never been inspected or authorized by an immigration officer and, therefore, has not been "admitted" into the United States. As a result, the statute deems him an "applicant for admission" who is also "seeking admission," and, therefore, subject to mandatory detention.

An examination of the relevant legislative history counsels a similar conclusion. *See Moran Rayo*, 2026 WL 594079, *4. Congress enacted both 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Before passage of the IIRIRA, the INA only provided for inspection of foreign nationals when they arrived at ports of entry. *See* former 8 U.S.C. § 1225(a) (1994). If, after inspection, immigration officers at a port of entry determined the foreign national was inadmissible, they would be placed into "exclusion" proceedings and were subject to mandatory detention. *See* former 8 U.S.C. § 1182(d)(5) (1994).

By contrast, under this former statutory regime, foreign nationals who entered the United States illegally, and were later discovered, were placed into "deportation" proceedings and were eligible to request release on bond. *See* former 8 U.S.C. § 1252(a)(1) (1994). To address this anomaly, Congress passed § 1225(a)(1) to replace these aspects "of the current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges ... that are not available to aliens who present themselves for inspection at a port of entry." *See Buenrostro-Mendez,* 166 F.4th at 508.

As such, the outcome Petitioner suggests contradicts the purpose of § 1225(a)(1), which Congress enacted to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings." *Avila,* 170 F.4th at 1135–36 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)); *Moran Rayo*, 2026 WL 594079 at *4 (finding that a contrary interpretation "would afford foreign nationals who illegally enter the country and evade detection by immigration officers greater procedural protections than those available to foreign nationals who lawfully present themselves for inspection at a port of entry"); *Ugarte-Arenas*, 2025 WL 3514451 at *4 (observing that "it would make little sense to reward those...who successfully evaded detection upon arrival in the United States...with discretionary release, while mandating the detention of those...who sought entry at a border or port of entry" and that such an outcome would "incentivize illegal entry into the country on a massive scale").

Finally, the Magistrate Judge concluded that the government's interpretation of § 1225(b)(2)(A) "would make the recently enacted amendment to § 1226(c) superfluous." R&O, ECF 6, at p. 5. With respect, and as this Court has previously ruled, the Magistrate Judge's conclusion on this point is incorrect. *Cirrus Rojas*, 2025 WL 3033967, *9. Indeed, "legislation

passed in 2025 has little bearing on the meaning of legislation enacted in 1996," and "nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case." *Id.*

In sum, under the plain language of Section 1225(b)(2)(A) and the undisputed facts of this case, Petitioner is subject to § 1225(b)(2)(A)'s mandatory detention provision. Petitioner, therefore, is not entitled to a bond hearing under the INA.

**III. No Due Process Violation**

In addition to alleging that his detention pending removal violates the INA, Petitioner asserts that "[t]he government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process." (ECF 1 at ¶ 58.) The Magistrate Judge did not reach Petitioner's due process arguments in the R&O in light of his conclusion that Petitioner's detention without bond was unauthorized by the INA. As explained below, consistent with its prior decisions, the Court should reject Petitioner's due process claim. *See Cirrus Rojas*, 2025 WL 3033967, *12.

Congress has specifically authorized immigration officers to arrest and detain foreign nationals for purposes of removing them from the country, and such procedures have consistently withstood due process challenges. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 323 (2018) ("This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice.") (Thomas, J., concurring in part and concurring in the judgment) (citations omitted); *see also Demmore v. Kim*, 538 U.S. 510, 523 (2003) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation

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

Petitioner has been detained for less than two months. Furthermore, Petitioner has already received a final hearing date of June 26, 2026 for the adjudication of any applications for relief from removal. (Gilgannon Decl., Ex. B.) These proceedings are, therefore, progressing in a timely manner that is geared towards minimizing the length of detention and attendant infringement on Petitioner's liberty interests. As such, Petitioner's detention has neither been prolonged, nor is it indefinite, and he cannot demonstrate that there exists "no reasonable likelihood of his removal in the foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001). Rejecting a similar due process claim in *Cirrus Rojas*, this Court made the following observation:

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

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

Petitioner is receiving the process to which he is due through his removal proceedings under 8 U.S.C. § 1229a(b)(4). The United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Parra*, 172 F.3d at 958. The Petition fails to show that the deprivation of Petitioner's liberty—as an unadmitted, arriving foreign

national with no status in the United States—while he awaits the conclusion of his removal proceedings violates due process. *Denmore*, 538 U.S. at 531 (no due process violation in detaining foreign national pending removal proceedings); *Parra*, 172 F.3d at 958 ("The private interest here is not liberty in the abstract, but liberty *in the United States* by someone no longer entitled to remain in this country but eligible to live at liberty in his native land[.]") (emphasis in original). Accordingly, the Petitioner has failed to demonstrate a violation of his rights under the due process clause.

**CONCLUSION**

For the reasons set forth above, the United States respectfully requests that the Court decline to adopt the R&O issued in this matter, deny Petitioner's habeas petition and dismiss this case with prejudice.

Dated at Milwaukee, Wisconsin this 10th day of June 2026.

Respectfully submitted,

s/Stuart Gilgannon
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