

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOSE ROLDAN RAMIREZ GOMEZ,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 1:25-cv-1443 (MSN/LRV)

**FEDERAL RESPONDENTS' OPPOSITION TO
THE PETITION FOR A WRIT OF HABEAS CORPUS**

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INTRODUCTION

Petitioner Jose Roldan Ramirez Gomez challenges the legality and constitutionality of United States (“U.S.”) Immigration and Customs Enforcement’s (“ICE’s”) established authority to civilly detain him pending his removal from the U.S. As “[a]n alien present in the [U.S.] who has not been admitted[.]” Petitioner is defined *by law* as an applicant for admission. 8 U.S.C. § 1225(a)(1). And because Petitioner is an applicant for admission who “seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted” to the U.S., “[he] *shall* be detained[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, Petitioner contends that he is subject to discretionary detention under 8 U.S.C. § 1226(a), and such detention without a bond hearing violates the Immigration and Nationality Act (“INA”), its implementing bond regulations, the Administrative Procedure Act (“APA”), and the Fifth Amendment Due Process Clause. Petitioner also challenges his initial arrest as unconstitutional.

Petitioner’s challenge fails on several fronts. *First*, the INA clearly defines an “alien present in the U.S. who has not been admitted” as an “applicant for admission.” And because Petitioner is present in the U.S., has not been admitted, is seeking admission, and not clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention pursuant to § 1225(b)(2)(A). As for Petitioner’s constitutional claim, the due process afforded to applicants for admission is that which is provided by the INA. And since no additional process is due to the Petitioner, the Department of Homeland Security’s (“DHS’s”) detention of Petitioner does not violate Petitioner’s due process rights, even if he has lived in the U.S. illegally for years. Petitioner’s constitutional challenge to his arrest also fails because Petitioner may only challenge his *current* detention in habeas and in any event,

his initial arrest was lawful. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.¹

Federal Respondents recognize that this Court (and others) recently rejected Federal Respondents' arguments on the issues presented below. *See, e.g., Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sep. 30, 2025); *Lopez-Sanabria v. Bondi*, 1:25-cv-1511, Dkt. 9 (E.D. Va. Oct. 3, 2025); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16, Order, at 3-5 (E.D. Va. Oct. 2, 2025); *see also Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. 2025) (Brinkema, J.); *Diaz Gonzalez v. Lyons*, 1:25-cv-1583, Dkt. 8 (E.D. Va. Oct. 1, 2025) (same); *Gomez Alonzo v. Lyons*, 1:25-cv-1587, Dkt. 16 (E.D. Va. Oct. 1, 2025) (same); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (same). Federal Respondents respectfully make these arguments to preserve them for appeal.

BACKGROUND

A. Statutory and Regulatory Background

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing petitioner's civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Important to any understanding of this statutory scheme is the concept of "admission." An "admission" (or "admitted") is "the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and as the Supreme Court has unequivocally held,

¹ Even if this Court were to determine that the BIA's statutory construction was in error, and that Petitioner is thus detained pursuant to § 1226(a) (as opposed to § 1225(b)(2)), Petitioner is not entitled to outright release from this Court. To the contrary, the sole relief that this Court can provide is an order compelling the Immigration Court to hold a bond hearing at which Petitioner may advocate for an exercise of discretion in favor of his release on bond.

requires federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b) (emphasis added).

1. Mandatory Detention – 8 U.S.C. § 1225

Any “alien present in the [U.S.] who has not been admitted or who arrives in the U.S.” whether or not at a port of entry is treated as an “applicant for admission.” 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or those handled through non-expedited removal proceedings under § 1225(b)(2).² *Hasan v. Crawford*, 2025 WL 2682255, at *5; *see Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) (Brinkema, J.); 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission). Section 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)[.]” *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission “*shall be detained* for a [removal] proceeding” 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).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue . . . until removal proceedings have concluded.” *Id.* (internal citation omitted). But “[o]nce those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297. Further, while section 1225(b)(2) does not provide for bond hearings, *see id.* at 297–303; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), it does contain “a specific provision authorizing release from . . . detention”: The Secretary of Homeland Security (hereinafter, the “Secretary”) “may ‘for urgent humanitarian reasons or significant public

² There are other options not relevant here for removal related to criminal aliens, *see* § 1226(c), and national security and other similar grounds under, *see* § 1225(c).

benefit’ temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2),” *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). “[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s].” 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

2. Discretionary Detention – 8 U.S.C. § 1226(a)

As the Supreme Court notes, “[s]ection 1226 *generally* governs the process of arresting and detaining that group of aliens pending their removal.” *Jennings*, 583 U.S. at 288 (emphasis added); *see* 8 U.S.C. § 1226(a); *Rodriguez*, 747 F. Supp. 3d at 916. Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. *See* 8 U.S.C. § 1226(a). By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Pursuant to 8 U.S.C. § 1226(b), ICE “at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the alien under the original warrant, and detain the alien.” *Id.*; *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

B. Petitioners’ Immigration History

Petitioner, a 45-year-old native and citizen of Guatemala, entered the U.S. on or about January 23, 2003, without being admitted or paroled by an immigration officer. Federal Respondents’ Exhibit (“FREX”) 1, Declaration of James Mullan ¶¶ 5-6; Am. Pet. ¶ 24. On or about February 5, 2014, Petitioner was charged with being inadmissible to the U.S. and thus removable, *see* 8 U.S.C. § 1229a(e)(2), under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. FREX 1 ¶ 7. On or about November 12, 2015, ICE exercised prosecutorial discretion and joined Petitioner in a motion to administratively close proceedings. The Immigration Judge granted

the joint motion and removal proceedings were administratively closed. FREX 1 ¶ 8; Am. Pet. ¶ 26. On June 20, 2025, the DHS filed a motion to recalendar administratively closed proceedings pursuant to 8 C.F.R. § 1003.18(c)(3)(ii), which was granted on September 10, 2025. FREX 1 ¶ 9, 12.

On August 28, 2025, Petitioner was arrested by officers from the Houston, Texas ERO field office, led by SDDO Jason Meyen, and brought to an ICE facility in Chantilly, Virginia. *Id.* ¶ 10; Federal Respondents' Exhibit ("FREX") 2, Declaration of Jason Meyen, ¶ 14. Officers from the Houston, Texas ERO field office were surveilling an area of a target at 903 Butternut Street NW, Washington, D.C. 20012. The target was identified as a Hispanic male, about 5'6", medium build, dark hair, between 25-40 years of age. *Id.* ¶ 7. ERO officers observed Petitioner and another individual enter a work van at around 10:30 a.m. next to the target's address. Both Petitioner and another individual matched the description of ERO's target. *Id.* ¶ 8. Based on a visual match to the target, ERO officers conducted a brief investigatory vehicle stop of the work van at 4016 Georgia NW, Washington, D.C. 20011. *Id.* ¶ 9. ERO officers asked both Petitioner, who was the passenger in the van, and the other individual, who was the driver of the van, if they were in the United States legally and if they could provide any identification. *Id.* ¶ 10. Petitioner presented a work authorization card, which positively identified him as Jose Ramirez Gomez, but did not provide any proof of legal status in the United States. Petitioner stated that his wife is a national and citizen of Guatemala. Petitioner stated that his parents are natives and citizens of Guatemala with no lawful immigration status in the United States. *Id.* ¶ 11. Based on this information, ERO officers determined that there was probable cause to arrest Petitioner at that time under 8 U.S.C. § 1357(a)(2). *Id.* ¶ 12. Based on Petitioner's lack of proof of lawful status, lack of any visa petitions filed on his behalf by a family member, and prior unlawful entry in the United States, ERO determined that Petitioner poses a flight risk and is likely to abscond pursuant to 8 C.F.R. § 1236.1(c)(3). *Id.* ¶ 13.

While at the processing facility in Chantilly, VA, ERO issued Petitioner a Form I-200, Warrant

for Arrest of Alien. FREX 1 ¶ 11. Petitioner was then placed in ICE custody at Farmville Detention Center in Virginia, and subsequently transferred to the South Texas ICE Processing Center in Texas. *Id.* Petitioner is in immigration custody pursuant to 8 U.S.C. § 1225(b)(2)(A) as an alien who is an applicant for admission because he is present in the U.S. without admission or parole. He is not clearly and beyond a doubt entitled to be admitted to the U.S. and is seeking admission to the U.S. *Id.*

On October 7, 2025, the Pearsall Immigration Court scheduled for a hearing to be conducted on October 29, 2025, for Petitioner's removal proceedings. *Id.* ¶ 13.

C. The Instant Petition

Seeking immediate release or a bond hearing, Petitioner filed an Amended Petition for a Writ of Habeas Corpus on October 2, 2025. *See* ECF 10 (Am. Pet.). Petitioner claims DHS violated the INA and its implementing regulations³ by subjecting Petitioner to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and not providing him a bond hearing. *Id.* ¶¶ 51-70 (Claims 2-5). Petitioner further claims that his detention without a bond hearing violates his due process rights. *Id.* ¶¶ 43-50 (Claim 1). Petitioner also challenges his arrest as unconstitutional, *id.* ¶¶ 71-77 (Claim 6), and argues that the nature of his claims justifies immediate release, *id.* ¶¶ 78-82 (Claim 7).

ARGUMENT

I. Petitioner's Detention is Lawful

A. Petitioner is an applicant for admission seeking admission and is not clearly and beyond a doubt entitled to be admitted; therefore, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

Before this Court can analyze Petitioner's claims, it must determine what statute authorizes Petitioner's detention. *See Abreu v. Crawford*, 2025 WL 51475, at *3-4 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.). As a *legal* matter, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A) as

³ Petitioner also asserts a claim under the APA, but a civil claim is not cognizable in the habeas context. *See, e.g., Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

he is an applicant for admission “seeking admission [and] is not clearly and beyond a doubt entitled to be admitted.” *Id.*; see *Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025) (emphasis added); *but see Hasan*, 2025 WL 2682255, at *9; *Quispe-Ardiles*, 2025 WL 2783800, at *7.

There is a statutory distinction between aliens who are detained after a lawful admission into the U.S. and those who are present without a lawful admission. “An alien who ‘arrives in the [U.S.],’ or is ‘present’ in this country but ‘has not been admitted,’ is considered an ‘applicant for admission’ under 8 U.S.C. § 1225(a)(1).” *Hasan*, 2025 WL 2682255, at *9. “Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2).” *Luna Quispe*, 2025 WL 2783799, at *4 (quoting *Olaya Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025) (Trenga, J.); see *Jennings*, 583 U.S. at 287 (section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)”) (emphasis added). “Both sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission.” *Luna Quispe*, 2025 WL 2783799, at *4. “Both provisions require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude.” *Olaya Rodriguez*, 2025 WL 2490670, at *2 (citing 8 U.S.C. §§ 1225(b)(1), (2)). According to this Court, an alien must meet three requirements to be subject to § 1225(b)(2)(A) mandatory detention: (1) be an applicant for admission, (2) be “seeking admission[.]” and (3) “is not clearly and beyond doubt entitled to be admitted into the [U.S.]” *Luna Quispe*, 2025 WL 2783799, at *5 (quoting 8 U.S.C. § 1225(b)(2)(A) (internal quotations omitted); see also *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4 (D. Mass. 2025). Petitioner meets all three requirements and is thus properly detained under 8 U.S.C. § 1225(b)(2)(A).

- i. Plaintiff is statutorily defined as an applicant for admission.

The factual circumstances of this case make clear Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he is an applicant for admission and DHS did not elect to utilize expedited removal.⁴ In analyzing whether an alien is an applicant for admission under the INA, “[w]e begin, as always, with the text.” *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017); *see Chavez*, 2025 WL 2730228, at *4 (same); *see also Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) (“[T]he best evidence of Congress’s intent is the statutory text.”). An applicant for admission is defined as “an alien *present* in the [U.S.] who has *not been admitted*.” 8 U.S.C. § 1225(a)(1). The only requirements to be an applicant for admission is to be (1) present in the U.S., and (2) have not been admitted. *See id.* And the INA defines “admission” as “the *lawful entry* of the alien into the [U.S.] *after inspection and authorization by an immigration officer*.” 8 U.S.C. § 1101(a)(13) (emphasis added); *see Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

Petitioner has not been admitted to the U.S. *See* FREX 1 ¶ 6. Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official, thus he does not satisfy the definition of “admission.” *See* 8 U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). Thus, because Petitioner is “an alien *present* in the [U.S.] who has *not been admitted*[.]” he is, *by law*, an “applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025).

Petitioner is detained pursuant to § 1225(b)(2)(A) because he is “an *applicant for admission* . . . seeking admission [and] is not clearly and beyond a doubt entitled to be admitted.”⁵ *Id.* (emphasis

⁴ DHS has the discretion to choose between processing for expedited removal under § 1225(b)(1) or standard removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M*, 25 I. & N. Dec. 520 (BIA 2011).

⁵ Respectfully, the recent decision in *Hasan v. Crawford* failed to analyze whether petitioner was in fact seeking admission and beyond a reasonable doubt not admitted to the U.S. *See* 2025 WL 2682255, at *5-9. Similarly, the district court’s decision in *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *8-10 (D. Md. Aug. 24, 2025) is inconsistent with the definition of “applicant for admission.” An “applicant for

added); *see* FREX 1 ¶¶ 6-7, 13. Indeed, Congress’ intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), *see* Pub. L. No. 104-208, 110 Stat. 3009 (1996), was to make sure that those who entered the U.S. without inspection did not have more procedural or substantive due process rights than those who present themselves to authorities for inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). A contrary reading of § 1225(b)(2)(A) would mean that aliens who *entered* the U.S. *illegally* and *remain* in the U.S. *illegally* are afforded more due process protection (*i.e.*, a bond hearing) than those who follow U.S. law and seek *lawful entry* at the border or a port-of-entry. *See* 8 U.S.C. § 1225(a)(3) (“All aliens [] who are applicants for admission or otherwise seeking admission . . . *shall* be inspected by immigration officers”) (emphasis added); *id.* § 1325 (criminalizing improper entry by an alien). As the Supreme Court reiterated in *Thuraissigiam*, “foreigners who have never been naturalized . . . *nor even been admitted* into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law.*” 591 U.S. at 138 (quoting *Nishimura Ekin*, 142 U.S. at 660) (internal quotations omitted) (emphasis added); *see id.* at 139 (noting the executive has plenary power to decide whether an alien should be *admitted*) (emphasis added).

Therefore, because Petitioner is “an alien present in the [U.S.] who has not been admitted[.]” he “shall be deemed . . . an applicant for admission.” 8 U.S.C. § 1225(b)(1).

- ii. Petitioner is actively seeking admission to the U.S. and is not clearly and beyond a doubt entitled to be admitted.

In addition to being an applicant for admission, another jurist of this Court recently found that to be detained pursuant to § 1225(b)(2)(A), such applicant for admission must be “actively seeking admission into the [U.S.]” *Luna Quispe*, 2025 WL 2783799, at *5. And because Petitioner is actively

admission” is either “[a]n alien present in the [U.S.] who has not been admitted *or* who arrives in the [U.S.]” 8 U.S.C. § 1225(a)(1) (emphasis added).

seeking admission and is not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to § 1225(b)(2)(A). *See Vargas*, 2025 WL 2780351, at *9.

By simply being in the U.S. without being admitted, Petitioner is in fact actively seeking admission into the U.S. *See Jennings*, 583 U.S. at 288 (finding aliens detained under § 1225(b)(2)(A) “‘shall be detained for a removal proceedings’ if an immigration officer ‘determines that they are not clearly and beyond a doubt entitled to be admitted’ into the country”) (quoting 8 U.S.C. § 1225(b)(2)(A) (cleaned up); *Vargas*, 2025 WL 2780351, at *9 (“just because [Petitioner] illegally remained in this country for years does not mean that he is suddenly not an ‘applicant for admission’ under § 1225(b)(2)’”). Indeed, Fourth Circuit case law supports this reading. *See Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021); *see also Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011) (“[i]f the alien is *seeking admission*, he is charged in removal proceedings as an inadmissible[.]”) (emphasis added); *id.* (“[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227”).

In *Lopez-Sorto*, the Fourth Circuit denied a petition for review of a BIA order affirming an IJ’s decision to deny an alien’s application for deferral of removal. 103 F.4th at 247. One issue in *Lopez-Sorto* was whether the petition was moot when the petitioner was removed from the U.S. *See id.* at 248. The petitioner contended that his petition was not moot because of an ICE directive that allegedly required him to be returned to the U.S. because he *resided* in the U.S. *Id.* at 249 (emphasis added). The court found that he could *not* reside in the U.S. because he was not legally allowed to be *physically present* in the U.S. *Id.* at 250-51 (emphasis added). The Court reached this reasoning by analyzing the definition of “admission,” and found that an alien cannot be, under immigration law, physically present in the U.S. without being admitted to the U.S. *Id.* at 252; *see id.* (“in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]”) (citing *Kaplan*, 267 U.S. at 229-30). And since Petitioner seeks to establish a life in the U.S., *see* Am. Pet., at ¶ 39; he must

be seeking admission before he can, as a legal matter, be physically present and reside in the U.S. *See Lopez-Sorto*, 103 F.4th at 252; *see also Vargas*, 2025 WL 2780351, at *9 (finding alien is seeking admission if he wishes to stay in the country); *Matter of Lemus*, 25 I. & N. Dec. 734, 743 (aliens not admitted can be seeking admission by being present in the U.S.).

Jimenez-Rodriguez provides further guidance. 996 F.3d 190. The alien in *Jimenez-Rodriguez* entered the U.S. without inspection and “lived in [the] U.S. ever since.” *Id.* at 191. He eventually applied for a U-visa seeking lawful status. *Id.* at 193. To be eligible to for a U-visa, an alien must not be inadmissible, but he may apply for a waiver of inadmissibility if he is “seeking admission” to the U.S. *See* 8 U.S.C. § 1182(d)(3)(A)(ii); 8 C.F.R. § 214.1(a)(3)(I). In determining whether an alien was “seeking admission,” the Fourth Circuit looked to § 1225 for guidance. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2; *id.* at 199. Reading the INA and § 1225(a)(1) together, the Fourth Circuit concluded that “[b]ecause Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone “seeking admission[.]” *Id.* at 194 n.2.

Although Federal Respondents recognize that Petitioner here is not seeking U-visas or any waivers of inadmissibility, Petitioner, like the alien in *Jimenez-Rodriguez*, entered the U.S. without inspection and has never left the U.S. *See* FREX 1 ¶ 6. The Fourth Circuit determined that the petitioner in *Jimenez-Rodriguez* was “seeking admission” because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. Therefore, it follows that “[b]ecause [Petitioner] [was] never lawfully admitted, he qualifies as someone seeking admission[.]” *Jimenez-Rodriguez*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (internal quotations omitted) (emphasis added). And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A). *Vargas*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2.

Federal Respondents’ reading of § 1225(b)(2)(A) does not render 8 U.S.C. § 1226(c) superfluous. *See Vargas*, 2025 WL 2780351, at *9-10; *Chavez*, 2025 WL 2730228, at *5; *but see Hasan*, 2025 WL 2682255, at *8; *Luna Quispe*, 2025 WL 2783799, at *5; *id.* n.5; *Quispe-Ardiles*, 2025 WL

2783800, at *6. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens, and is *not* limited to any subset. *See id.* (“[t]he Attorney General shall take into custody *any* alien”) (emphasis added). Indeed, lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024) (lawful permanent resident challenging his inadmissibility under § 1182(a)(2)). It also reaches those who may have been admitted erroneously but are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i); *Lopez-Sorto*, 103 F.4th at 251 (“There is a possibility that inadmissible aliens may be admitted when they are mistakenly authorized to enter the country by an immigration officer.”) (citing *In Re Quilantan*, 25 I. & N. Dec. 285, 291 (BIA 2010); *Kanu v. Garland*, 672 F. Supp. 3d 108, 117 (E.D. Va. 2023) (Nachmanoff, J.) (finding a lawful permanent residence’s initial admission unlawful because he was inadmissible pursuant to § 1182(a)(6)(C)(i)). This is evident in the structure of the process of adjustment of status under 8 U.S.C. § 1255(a) which requires, for an alien to be changed from a non-immigrant status to becoming a lawful permanent resident, that they be admitted and be “admissible.” The reality of admitted but inadmissible aliens is underlined by the existence of a waiver of inadmissibility for adjustment applications, applications that are only available to admitted aliens and a small set of applicants for admission not relevant here. *See id.*; 8 U.S.C. § 1182(h); 8 C.F.R. § 245.1(f).

Petitioner asserts that aliens who entered the U.S. without admission or parole are not subject to § 1225(b)(2)(A) and instead are afforded discretionary detention under § 1226(a) which allows for bond. Petitioner is mistaken for several reasons. As a matter of statutory construction, § 1225(b)(2)(A) governs because it contains specific mandatory language, *see id.* (“the alien *shall* be detained”) (emphasis added), as opposed to § 1226(a)’s general discretionary and permissive language, *see id.* (“an alien *may* be arrested and detained”) (emphasis added). *See Morales*, 504 U.S. at 384 (“it is a commonplace of

statutory construction that the specific governs the general”). And as the Fourth Circuit makes clear, “a general provision should not be applied when doing so would undermine limitations created by a more specific provision.” *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016) (quoting *Coady v. Vaughn*, 251 F.3d 480, 484 (4th Cir. 2001)) (internal quotations omitted). Such contrary position that § 1226(a) governs “would render mandatory detention under § 1225(b) meaningless.” *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).⁶

Jennings is instructive. 583 U.S. at 288-89. In *Jennings*, the Supreme Court analyzed three detention provisions in the INA: 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c). *See id.* at 287-89. In analyzing detention under § 1226, the *Jennings* Court distinguished applicants for admission who are subject to mandatory detention pursuant to § 1225 with those who are “within one or more . . . classes of *deportable* aliens” and thus fall under § 1226 detention. *Id.* at 288 (quoting 8 U.S.C. §§ 1227(a)(1), (2)) (internal quotations omitted) (emphasis added). Here, Petitioner is not subject to the deportability grounds at 8 U.S.C. § 1227; he is charged with being *inadmissible* under 8 U.S.C. § 1182. *See* FREX 1 ¶ 7. And since he is not charged with any deportability grounds found in § 1227, he cannot be detained under 8 U.S.C. § 1226. *See* 8 U.S.C. § 1229a(e)(2) (defining removal); *Cruz-Miguel*, 650 F.3d at 198 n.13 (“[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227”).

Recently, jurists of this Court held that “Respondents’ position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a).” *Luna Quispe*, 2025 WL 2783799, at *6; *see Quispe-Ardiles*, 2025 WL 2783800, at *5. In analyzing the “default rule” as construed by *Jennings*, this Court distinguished “aliens seeking admission into the country,” who are subject to § 1225(b) detention, and “aliens already

⁶ Petitioner further argues that his detention violates 8 C.F.R. § 241.13(i), which, according to Petitioner, affords him a “regulatory right to a detailed explanation for the reasons for his detention.” Am. Pet. ¶ 45. But that regulation pertains to procedures for those subject to final orders of removal whose release is revoked. *See* 8 C.F.R. § 241.13(i) (“Revocation of release”). Thus, this regulation is inapplicable to Petitioner’s detention.

in the country” who are subject to removal proceedings. *See* 2025 WL 2783800, at *5. But what these decisions failed to note is the language from *Jennings* regarding only “**certain** aliens already in the country,” not *all* aliens already in the country. *Id.* at 289; *see Vargas*, 2025 WL 2780351, at *9. And while Petitioner is an “alien already in the country⁷,” he is also an “alien seeking admission into the country.” *Id.* Therefore, under the rules of statutory interpretation, Petitioner is detained pursuant to § 1225(b)(2)(A)’s *mandatory* framework, *see id.* (“the alien *shall* be detained”) (emphasis added), as opposed to § 1226(a)’s *discretionary* framework, *see id.* (“an alien *may* be . . . detained”) (emphasis added). *See Morales*, 504 U.S. at 384 (“it is a commonplace of statutory construction that the specific governs the general”).

In further support of its reasoning, the Court in *Quispe-Ardiles* stated that Federal Respondents’ interpretation of § 1225(b)(2)(A) “[would be] [in]consistent with the core logic of our immigration system.” 2025 WL 2783800, at *7. The court, citing to *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958), stated:

“[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within [U.S.] after an *entry*, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial *entry*.”

Quispe-Ardiles, 2025 WL 2783800, at *7 (internal citations and quotations omitted). Therefore, the court found that “it is ‘doubtful that Congress intended § 1225(b)(2) to apply’ to individuals like Mr. Quispe-Ardiles who were detained after being present in the U.S. for several years, who had not committed any crimes, and who had attended every required meeting with immigration officials.” *Id.* (quoting *Hasan*, 2025 WL 2682255, at *8).

⁷ To be clear, such reading would not render any part of the statute superfluous as there are other classes of aliens subject to § 1226(a) besides “applicants for admission.” *See, e.g.*, 8 U.S.C. §§ 1101(a) (defining immigrant and nonimmigrant aliens), 1227(a) (noting deportable aliens must be admitted).

But the court’s reliance on *Leng May Ma* is misplaced. At the time *Leng May Ma* was decided, an “admission” was not defined in the INA like it is today. *See generally* 8 U.S.C. § 1101(a). At that time, the term “entry” was used in lieu of the word “admission.” *Compare id.* § 1101(a)(13) (1988) (defining “entry” as “any coming of an alien into the [U.S.], from a foreign port or place”), *with id.* § 1101(a)(13)(A) (2025) (defining “admission” as “the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer”); *see Vartelas v. Holder*, 566 U.S. 257, 261-63 (2012) (explaining “entry” and “admission”). Once Congress enacted the IIRIRA, admission became “the key word.” *Vartelas*, 566 U.S. at 262. Thus, reading additional language in *Leng May Ma* with the adoption of the term “admission” instead of “entry,” the case goes on to state that “the detention of an alien in custody pending determination of his admissibility does not legally constitute an [admission] though the alien is physically within the [U.S.]” *Leng May Ma*, 357 U.S. at 188 (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 215 (1953); *U.S. v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu v. U.S.*, 142 U.S. 651, 661 (1892)). Therefore, it seems it *was* Congress’ intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Petitioner. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez*, 693 F.3d at 413 n.5.

Another jurist of this Court seems to imply, citing to *Jennings*, that “arriving aliens” and “applicants for admission” are the same, finding that only arriving aliens can be subject to mandatory detention pursuant to § 1225(b)(2)(A). *See Luna Quispe*, 2025 WL 2783799, at *5. Federal Respondents respectfully disagree with the Court. An “arriving alien” is a sub-category of an applicant for admission. *See* 8 C.F.R. §§ 1.2 (“arriving alien means an *applicant for admission* coming or attempting to come into the [U.S.] at a port of entry”) (emphasis added), 1001.1(q) (same). To be an arriving alien, one must be both “an applicant for admission” *and* “coming or attempting to come into the U.S. at a port of entry.” *Id.* And *Jennings*, in fact, did *not* limit detention pursuant to § 1225(b) to “arriving aliens;” it limited mandatory detention under § 1225(b) to “applicants for admission.” *See Jennings*, 583 U.S. at

297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of *applicants for admission* until certain proceedings have concluded.”) (emphasis added). Indeed, as the Fourth Circuit makes clear, courts “cannot read into a statute what is manifestly just not there.” *Day v. Johns Hopkins Health Sys. Corp.*, 907 F.3d 766, 780 (4th Cir. 2018) (citing *U.S. v. Locke*, 471 U.S. 84, 95 (1985) (“[T]he fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do.”)).

Lastly, several jurists of this Court found Federal Respondents’ interpretation of § 1225(b)(2)(A) to be “at odds with DHS’s own historic understanding of the statute’s meaning.” *Quispe-Ardiles*, 2025 WL 2783800, at *7; *see Hasan*, 2025 WL 2682255, at *9. But an agency’s own past practice cannot overcome the plain meaning of the statute. *See Bracamontes v. Holder*, 675 F.3d 380, 384 (4th Cir. 2012) (“the plain meaning controls”); *see also VanDerStok v. Garland*, 86 F.4th 179, 190 (5th Cir. 2023) (“historical practice does not dictate the interpretation of unambiguous statutory terms”) (internal citations and quotations omitted).

Therefore, because *by law* Petitioner is defined as an applicant for admission who is seeking admission and not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is thus properly detained under the INA.

B. The due process awarded to a Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is such process only afforded by the INA.

To assess the merits of Petitioner’s constitutional claims, it is necessary to determine first what due process rights Petitioner has. The INA *mandates* Petitioner’s detention:

[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added). And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien

could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. Petitioner has not been admitted to the U.S., *see* FREX 1 ¶ 6, and for any alien has “not been admitted into the country pursuant to law,” the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added). This Court and others have come to similar conclusions that the due process rights for other applicants for admission are only what the INA prescribes. *See Pipa-Aquise*, 2025 WL 2490657 (Nachmanoff, J.); *Olaya Rodriguez*, 2025 WL 2490670 (Trenga, J.); *Aslanturk v. Hott*, 459 F. Supp. 3d 681 (E.D. Va. 2020) (Alston, J.).

While *Thuraissigiam* recently addressed the due process afforded to arriving aliens detained pursuant 8 U.S.C. § 1225(b)(1), such analysis of § 1225(b)(2) has yet to be addressed by the Supreme Court. However, *Nishimura Ekiu* provides guidance. 142 U.S. 651. There, a Japanese national petitioned for habeas corpus after being “detained at San Francisco upon the ground that she should not be permitted to land in the [U.S].” *Id.* at 651. Although the petitioner, who had arrived by ship, was not entitled to land, an immigration official had placed her in a mission house in San Francisco with the intent of “keeping her there” until judicial proceedings concluded. *Id.* at 661. After determining that the petitioner had been “restrained of h[er] liberty” and was “doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint [wa]s lawful,” the Supreme Court explained an unadmitted alien’s due process rights are closely circumscribed:

It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the [U.S.], nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government.

Id. at 660. “As to such persons,” the court concluded, “the decisions of executive or administrative officers, acting within powers expressly conferred by [C]ongress, *are due process of law.*” *Id.* (emphasis added).

Looking to the statute at issue, the Supreme Court held that the immigration officer's decision to prevent the petitioner from landing was made in accordance with that statute; that his determination "was final and conclusive against the petitioner's right to land in the [U.S.]; and that the petitioner therefore was "not unlawfully restrained of her liberty." *Id.* at 663-64. In other words, the government's adherence to the statute authorizing her detention after a determination that she could not land was the only due process right the petitioner could claim. As the Supreme Court stated in *Thuraissigiam*, "a concomitant" of the government's "plenary authority to decide which aliens to admit" is "the power to set the procedures to be followed *in determining whether an alien should be admitted.*" 592 U.S. at 139 (emphasis added).

Jennings provides further clarity. 583 U.S. 281 (2018). In *Jennings*, aliens alleged, notwithstanding other statutory detention provisions, that § 1225(b) provided for periodic bond hearings where the government must prove by clear and convincing evidence that such detention remains justified. 583 U.S. at 291. However, the Court found that "nothing in the statutory text imposes any limit on the length of detention. *Id.* And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. The Court also took note that that the clear exception to detention under § 1225(b) "implies that there are no *other* circumstances under which aliens detained under 1225(b) may be released." *Id.* at 300 (emphasis in the original). The Court's emphasis here thus implies that the Petitioner may not be released on bond. *See id.* Indeed, "the text of [] [§ 1225(b)], when read most naturally, does not give detained aliens the right to periodic bond hearings during the course of their detention." *Id.* at 286.

Other Supreme Court cases such as *Zadvydas v. Davis*, 533 U.S. 678 (2001), are inapposite to Petitioner's case because they concerned aliens *admitted* into the country who had obtained *lawful* status, rather than an applicant for admission such as Petitioner. This distinction "ma[kes] all the difference" when it comes to due process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just this point:

Acknowledging that “[t]he distinction between an alien who has effected an entry into the [U.S.] and one who has never entered runs throughout immigration law,” the Supreme Court conceded that aliens “who have not yet gained initial admission to this country *would present a very different question.*” 533 U.S. at 682, 693 (emphasis added); *see id.* at 693 (“[C]ertain constitutional protections available to persons inside the [U.S.] are unavailable to aliens outside of our geographic borders.”). So even on its own terms, *Zadvydas*’s analysis of the process due to an alien admitted into the country says nothing about the process to which an applicant for admission is entitled. *See also Jennings*, 583 U.S. at 298 (“nothing in the text of § 1225(b)(1) or § 1225(b)(2) even hints that those provisions restrict detention after six months”). Indeed, “*Zadvydas*’s reasoning is particularly inapt here because there is a specific provision authorizing release from § 1225(b) detention whereas no similar release provision applies to § 1231(a)(6).” *Id.* at 300.

C. If the Court were to find that Petitioner is owed more due process than the INA provides, Petitioner’s detention still does not violate the Due Process Clause.

The discussion above establishes, beyond reasonable dispute, that Petitioner’s due process rights extend no further than what the INA provides. In the event this Court finds more process is due, Federal Respondents contend that such due process analysis favors Petitioner’s continued detention. Thus, his claim that due process entitles him to something more must fail.

As a threshold matter, “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]” *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). More specifically, recalling the long-standing principle that “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable to citizens,” *Demore* held that Congress could “detain” an alien – without any procedure to determine on an “individual[ized] basis whether that alien was “dangerous” or a flight risk – during “his removal proceedings.” *Id.* at 521-23; 525 (quoting *Mathews v. Diaz*, 423 U.S. 67, 79-80 (1976)). This was so, the Court continued, because “detention during deportation

proceedings [w]as a constitutionally valid aspect of the deportation process.” *Id.* at 523; *see also id.* at 531. And it was irrelevant that bond hearings could provide an individualized assessment of an alien’s particular proclivity towards being a danger to the community and/or a flight risk without a significant burden, as Congress could employ “reasonable presumptions and generic rules” in dictating which aliens would be subject to mandatory detention because “the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 526 (quoting *Reno v. Flores*, 507 U.S. 292, 313 (1993)); 528. Put simply, as the Fourth Circuit has held, the *Demore* “Court refused to impose its own policy judgment on how best to ensure aliens’ attendance at future removal proceedings.” *Miranda*, 34 F.4th at 360.

Moreover, the governing procedural due process framework confirms that Petitioner’s detention satisfies an applicant for admission’s due process. The Fourth Circuit analyzes an alien’s due process claim by weighing the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Miranda*, 34 F.4th at 359-65. The three factors relevant to assessing Petitioner’s due process claim are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest.” *Mathews*, 424 U.S. 319, 335 (1976).

1. As an applicant for admission, Petitioner has a less compelling liberty interest—the first factor—than the aliens in *Zadvydas* and *Demore*, who were lawfully admitted. *See Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible alien pending removal did not violate due process); *Hong v. U.S.*, 244 F. Supp. 2d 627, 635 (E.D. Va. 2003) (“Hong’s liberty interest, as an inadmissible alien seeking admission into the country, is more attenuated than the liberty interest of a deportable alien already present in the country.”). The Supreme Court and Fourth Circuit even made clear that an alien who has not been admitted “does not have the same status for due process purposes

as an alien who has ‘effected entry.’” *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)).

The Supreme Court has emphasized that “detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, Petitioner’s private liberty interest is diminished when his release is available on the condition that he leaves the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 199) (unlike criminal cases, immigration detention “is not entirely beyond [the alien’s] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving the [U.S.]”).

An alien’s private interest is even more diminished when release into the U.S. would be an assistance to an ongoing violation of U.S. law. *See* 8 U.S.C. § 1182(a) (inadmissibility grounds). In addition to these inadmissibility grounds, 8 U.S.C. § 1325 provides that any alien who “enters or attempts to enter the [U.S.] at any time or place other than as designated by immigration officers,” “shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both[.]” *Id.* § 1325(a)(1); *see id.* § 1325(b) (civil penalties). In fact, such violation has been recognized by other courts, including the Supreme Court. *See AADC*, 525 U.S. at 491 (“in all cases, deportation is necessary in order to bring an end [to] an ongoing violation of [U.S.] law”); *Lopez-Mendoza*, 468 U.S. at 1039 (“The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws”); *Gomez-Chavez v. Perryman*, 308 F.3d

796, 800-01 (7th Cir. 2002) (no liberty interest in remaining in violation of applicable U.S. law). Accordingly, the first *Mathews* factor weighs in favor of the government.

2. Regarding the second factor, Petitioner has already received more process he is due because his ability to seek parole exceeds the opportunity for release available to other aliens detained pursuant to § 1226(c), who could be released only for narrow, witness-protection purposes. 8 U.S.C. § 1226(c)(2); *see* 538 U.S. at 513-14. Petitioner may be paroled for any “urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A). And as Federal Respondents made clear *supra*, Petitioner is by law an applicant to admission “seeking admission [and] is not clearly and beyond a doubt entitled to be admitted[.]” and subject to mandatory detention. 8 U.S.C. § 1225(b)(2)(A). Therefore, the second *Mathews* factor favors the government.

3. Regarding the third factor, the government’s interests in mandatory detention pursuant to section 1225(b) are legitimate and significant. “[T]he government interest includes detention.” *Miranda*, 34 F.4th at 364. A court “must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]” *Miranda*, 34 F.4th at 364. And for one, Petitioner’s argument that the Due Process Clause mandates immediate release flouts the Supreme Court’s directive that the government “need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication” when it comes to immigration regulation. *Diaz*, 426 U.S. at 81.

* * *

For all of these reasons, all three *Mathews* factors favor the government, and this Court should therefore dismiss the instant Petition.

D. If the Court is inclined to grant the Petition, the only relief the Court should offer is a bond hearing pursuant to normal procedures.

If the Court grants the Petition, the Court should order only a bond hearing pursuant to the usual procedures. *See Santos Garcia v. Garland*, 2022 WL 989019, at *7 (E.D. Va. Mar. 31, 2022) (Alston, J.); *Martinez v. Hott*, 527 F. Supp. 3d 824, 837-38 (E.D. Va. 2021) (Alston, J.). There is no warrant to adopt a novel burden-shifting framework that would require the government to bear the burden of proof to justify denying bond by clear and convincing evidence.

Under the regulations governing bond hearings for detained aliens, the alien bears the burden to show both that his release would not pose a danger to property or persons and that he is likely to appear for future proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (“[T]he alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding”). The Fourth Circuit has confirmed that such bond procedures outlined in 8 U.S.C. § 1226(a) are constitutional and satisfy due process. *See Miranda*, 34 F.4th at 366 (“Supreme Court precedent establishes that the current procedures used for detention under § 1226(a) satisfy due process”).⁸

II. Petitioner’s Challenge to His Initial Arrest Also Fails

⁸ If the Court shifts the burden of proof to the government, at the very least, the Court should require only proof “to the satisfaction of the [I]” rather than by clear and convincing evidence. *Bah v. Barr*, 409 F. Supp. 3d 464, 472 (E.D. Va. 2019) (quoting 8 C.F.R. § 1236.1(c)(8)).

Petitioner also asks this Court to “[d]eclare that Respondents’ actions to arrest and detain Petitioner violate” the Fourth and Fifth Amendments as well as the INA and attendant regulations. Am. Pet. at 16; *see also id.* ¶¶ 65-77.⁹ This claim fails.¹⁰

First, Petitioner’s argument – that his *initial warrantless arrest* on civil immigration grounds was unlawful – is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of Petitioner’s *current detention*. “[H]abeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see also Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020). It is for this reason that, as the Supreme Court has held, “the great and central office of the writ of habeas corpus is to test the legality of a prisoner’s current detention.” *Walker v. Wainwright*, 390 U.S. 335, 337 (1968). Moreover, Petitioner’s “current detention” is not

⁹ To the extent Petitioner requests a standalone declaratory judgment, pursuant to either the Declaratory Judgment Act, *see* 28 U.S.C. §§ 2201-02, or the Federal Rules of Civil Procedure, it is important to note that this Court lacks subject-matter jurisdiction to issue an independent declaratory judgment within the context of a petition for a writ of habeas corpus. Initially, it is well-settled that the Declaratory Judgment Act is not a waiver of the United States’ sovereign immunity. *See, e.g., Golden & Zimmerman, LLC v. Domenech*, 599 F. Supp. 2d 702, 708 (E.D. Va. 2009) (quoting *Ocean Breeze Festival Park, Inc. v. Reich*, 853 F. Supp. 906, 917 (E.D. Va. 1994)), *aff’d on other grounds*, 599 F.3d 426 (4th Cir. 2010). And the Federal Rules of Civil Procedure do not independently provide district courts with the authority to enter a declaratory judgment against the United States. *See* FED. R. CIV. P. 57 (providing that the Federal Rules of Civil Procedure “govern *the procedure* for obtaining a declaratory judgment under 28 U.S.C. § 2201”); 65 (providing authority to issue “preliminary injunctions” and “temporary restraining orders”). Moreover, the issuance of a declaratory judgment is inconsistent with the limited (albeit significant) nature of this Court’s habeas jurisdiction. As the Fourth Circuit has recognized, habeas proceedings occupy a unique place in the federal litigative landscape – they are not full “civil actions” under the Federal Rules and instead serve as “unique, hybrid proceedings.” *See Obando-Segura v. Garland*, 999 F.3d 190, 197 (4th Cir. 2021). Thus, the traditional remedies that are only available in full civil actions are simply not available when a litigant – such as Petitioner here – invokes this Court’s extraordinary habeas jurisdiction. *See, e.g., Timms v. Johns*, 627 F.3d 525, 531 (4th Cir. 2010) (noting that “habeas corpus is an extraordinary remedy typically available only when the petitioner has no other remedy”) (quoting *Archuleta v. Hedrick*, 365 F.3d 644, 649 (8th Cir. 2004)).

¹⁰ This Court was presented with a similar challenge in *Ramos v. Noem, et al.*, 1:25-cv-1377 (E.D. Va.), in which the Court denied the habeas Petition. *See* Dkt. 9 (Sept. 30, 2025).

premised on his warrantless arrest, but is instead premised on an issued *warrant* for his arrest pursuant to 8 U.S.C. § 1226(a).¹¹

To anticipate Petitioner’s retort, it is irrelevant that his initial warrantless arrest started the chain of causation – to borrow a term from tort law – to his current immigration detention. Both the Fourth Circuit and this Court have rejected habeas jurisdiction under such circumstances – this Court explicitly. First, in *D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016), an individual who was initially apprehended by Border Patrol officers brought a habeas petition challenging, *inter alia*, those officers’ conclusion that he fit the statutory definition of an “unaccompanied alien child” (“UAC”) at the time of that initial apprehension. *See id.* at 726-28. Both Judge Cacheris and the Fourth Circuit held that, regardless of the propriety of the individual’s initial apprehension, the only pertinent habeas question was whether the child’s then-current circumstances rendered him an “unaccompanied alien child” subject to government custody. *Id.* at 734 n.10 (“We need not address the propriety of the Border Patrol’s initial UAC determination with respect to R.M.B. The question before the district court – and now before us – is whether R.M.B.’s current detention complies with federal statutes and the Constitution.”). And this Court expressly rejected this theory in *Doe*; there, petitioner’s habeas petition challenged the propriety of his then-current detention under § 1226. *Doe*, 2022 WL 1837923, at *1. During the pendency of the petition, petitioner received a final order of removal, thus changing the legal basis of his detention from § 1226 to § 1231(a). *Id.* Despite petitioner’s argument that “his ‘ongoing detention remain[ed] a direct, downstream effect of the alleged constitutional violations that led to his detention pursuant to [§] 1226,” this Court held that it could not exercise habeas jurisdiction

¹¹Although § 1226(a) provided ICE with the statutory authority to issue a warrant to place Petitioner in custody, as noted above, the statutory authority for petitioner’s current detention (without the possibility of release on bond) is found in § 1225(b)(2)(A), because – as the presiding Immigration Judge recently held – Petitioner, who has never effected a lawful entry into the United States, remains an “applicant for admission.”

to review the constitutionality of petitioner’s prior § 1226 detention; rather, its jurisdiction was limited to the precise question of the propriety of petitioner’s *current* detention in § 1231. *Id.* at *2.

Second, even if this Court could exercise habeas jurisdiction over Petitioner’s initial arrest, the agents who encountered Petitioner on a Washington, D.C. street had probable cause to believe that he was unlawfully present in the United States and was likely to escape before a warrant could be obtained, as required by federal statute.

Congress has vested federal immigration officers with the authority to effectuate warrantless arrests under certain enumerated circumstances. *See generally* 8 U.S.C. § 1357(a). Of import here, those circumstances include those that would lead to the presentment of civil immigration charges against an alien through administrative removal proceedings:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant –

....

- (2) to arrest any alien . . . if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation [regulating the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest.

Id. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c). As one court has cogently put it, “there are two requirements” for exercise of this statutory authority: “the officer must have ‘reason to believe’ [(1)] that the alien is in the United States in violation of the immigration laws or related regulations and [(2)] the alien is ‘likely to escape’ before a warrant can be obtained.” *United States v. Segura-Gomez*, 2018 WL 6582823, at *5 (E.D.N.C. May 25, 2018). And in order for § 1357 to comport with the Fourth Amendment, courts have read the statutory phrase “reason to believe” to be “equivalent to . . . probable cause.” *Id.* at *6 (citing *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015)). Thus, to effectuate a constitutionally-proper warrantless arrest, an immigration officer must have “facts and circumstances . . . that are sufficient to warrant a prudent person, or one of reasonable caution, in

believing” that the two things identified in § 1357(a)(2) exist. *Id.* (quoting *Cabaly v. Larosa*, 796 F.3d 399, 407 (4th Cir. 2015)).

Accordingly, in order to comply with both constitutional and statutory strictures, DHS needed probable cause to believe that Petitioner was (1) unlawfully present in the United States; and (2) at risk of fleeing before a warrant could be procured. The objective facts and circumstances known to the ICE agents at the time that they effectuated Petitioner’s warrantless arrest more than satisfied these requirements.

1. The first of these requirements – probable cause to believe that Petitioner was unlawfully present in the United States – is easily established. When asked, Petitioner did not provide any proof of any legal status in the United States. Moreover, ICE determined Petitioner had a prior unlawful entry into the United States, and that there were no visa petitions filed on his behalf by a family member. *See* FREX 2, ¶¶ 11-13. Even if this Court could reach the question given the aforementioned jurisdiction-stripping provisions contained in federal statute, that information establishes probable cause to believe that Petitioner was within the United States unlawfully.

2. The remaining question is whether the ICE agents had probable cause to believe that Petitioner would flee (or escape) before a warrant could be obtained for his arrest. At the outset, although courts have appropriately noted that “[t]he likelihood-of-escape limitation is ‘seriously applied,’” *United States v. Davila*, 247 F. Supp. 3d 650, 668 (W.D. Pa. 2017) (quoting *United States v. Cantu*, 519 F.2d 494, 497 (7th Cir. 1975)), “[b]ecause of the difficulty of making an on-the-spot determination as to the likelihood of escape without any opportunity to verify information provided or to conduct a full-scale interview, ‘an [] officer’s determination will not be upset if there is any reasonable basis for it.’” *Contreras v. United States*, 672 F.2d 307, 308 (2d Cir. 1982) (quoting *Marquez v. Kiley*, 436 F. Supp. 100, 108 (S.D.N.Y. 1977)). The agents here had more than a “reasonable basis” for their conclusion about Petitioner’s likelihood to flee.

As the ICE agent learned during his temporally-limited interaction, Petitioner had no lawful status in the United States, his wife and parents were nationals of Guatemala, and there were no pending visa applications filed on his behalf by any such family members. And, as courts have recognized, an interaction with immigration officials could be the source of significant apprehension on the part of an alien unlawfully present in the United States. *Castenada v. Souza*, 810 F.3d 15, 61 (1st Cir. 2015) (opinion of Keyatta, J.).¹²

Unlike other opinions in the Fourth Circuit, in which jurists have held probable cause of flight risk absent, the agents here did not have the luxury of *choosing* when to encounter Petitioner (and alert him to the interest of federal immigration officials) – something that automatically suggests the ability to secure a warrant before apprehension. See, e.g., *United States v. Harrison*, 168 F.3d 483, 1999 WL 26921, at *4 (4th Cir. Jan. 25, 1999) (holding that there was insufficient indicia of flight risk because “there [was] no evidence that Harrison was traveling,” and that “[t]o the contrary, the bondsmen had been to his house several times and found him there each time”). This was certainly the case in *Segura-Gomez*. There, federal immigration officials had engaged in significant surveillance of the subject alien before approaching him. See *Segura-Gomez*, 2018 WL 6582823, at *7 (“Defendant did not then manifest any intention to escape. To the contrary, he went to a restaurant near the courthouse to eat lunch. The agents themselves did not deem him an escape risk at that point sufficient to arrest him. Instead, they let him eat lunch.”). And most importantly:

Certainly, the record does not show that the period between the agents’ observation of defendant’s departure and their encounter with him was so short – say, a minute or two – to have made acquisition of a warrant impossible. And, of course, there is no indication that defendant’s conduct or other circumstances compelled the agents to approach defendant when they did.

¹² Federal Respondents recognize that Petitioner here is not a “criminal alien”; although *Castenada* dealt exclusively with criminal aliens; the logic of the aforementioned discussion, however, applies equally to non-criminal aliens.

