IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

RAMILA PATEL a/k/a RUHIN R. MOMIN,	:	
Petitioner,	:	
v.	:	**Case No. 4:25-CV-277-CDL-AGH** **28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,[1]	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On September 5, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. On September 12, 2025, the Court ordered Respondent to file a response to the Petition within twenty-one (21) days. ECF No. 4. Later that day, Petitioner filed an "Amended Complaint for Writ of Habeas Corpus." ECF No. 5.[2] On September 22, 2025, Petitioner filed a Motion to

[1] In addition to Warden of Stewart Detention Center, Jason Streeval, Petitioner also names Immigration and Customs Enforcement ("ICE") and Enforcement and Removal Operations ("ERO"), ICE Atlanta Field Office Deputy Managing Director George Sterling, Secretary of the Department Homeland Security Kristi Noem, the Department of Homeland Security ("DHS"), and Attorney General Pamela Bondi as Respondents in her Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

[2] The "Amended Complaint" does not assert any specific claims for relief. Because the original Petition asserts a Substantive Due Process claim and a Procedural Due Process claim, Respondent will address those asserted grounds for relief, although the filing of an "Amended" pleading would normally supersede and take the place of a previously operative pleading. *See Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006) ("An amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary.") (quotation marks and citation omitted). Furthermore, in both the original Petition and the "Amended Complaint," Petitioner cites the Administrative Procedure Act (5 U.S.C. § 702) and the Declaratory Judgment Act (28 U.S.C. § 2201) but does not affirmatively assert claims

Expedite Hearing on Petition. ECF No. 6. The following day, the Court directed Respondent to address Petitioner's Motion to Expedite. ECF No. 7.

Petitioner asserts two claims in her pleadings: (1) her detention "violates h[er] rights to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint," Pet. 8, and (2) her detention under 8 U.S.C. § 1225(b) violates procedural due process because she has not received an "opportunity to demonstrate she should not be detained," Pet. 10. For the reasons explained below, the Petition should be denied.[3]

BACKGROUND

Petitioner is a native and citizen of India. Declaration of Deportation Officer ("DO") Dennis Karwowski ("Karwowski Decl.") ¶ 3 & Ex. A. On or about November 23, 1999, Petitioner entered the United States without inspection via the Canadian border. *Id.* & Ex. A. The following day, DHS issued Petitioner a Form I-862, Notice to Appear, placing her in removal proceedings. *Id.* ¶ 4 & Ex. B. Also on November 24, 1999, Petitioner was released on her own recognizance.

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under either. Respondent will not address either as Petitioner has offered no argument or basis on which to construe a claim against Respondent.

[3] The Court also directed Respondent to address Petitioner's Motion to Expedite Hearing. ECF No. 7. Respondent respectfully asserts that no hearing is necessary in this case at all. Petitioner's claims are similar to hundreds of other petitions on which this Court has ruled without a hearing. To the extent Petitioner asserts her request for expedited consideration is justified by the assertion that she is being subjected to unlawful conditions of confinement, *see* Mot. to Expedite at 2, such a claim is not cognizable in habeas and should not change the Court's normal procedure for adjudicating a case like this one. *See*, *e.g.*, *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam) (affirming dismissal of immigration detainee's habeas petition alleging the denial of inadequate medical care because the claim was not cognizable in habeas). Further, the fact that Petitioner "is the beneficiary in the approved I-130 petition" confirming she is the relative of a U.S. citizen has no impact whatsoever on her immigration status or her removal proceedings. Mot. to Expedite at 2. An I-130 petition only recognizes a relationship to a U.S. citizen and conveys no rights or privileges to any immigration status on its own. *See* ECF No. 6-7, Notice of Approval of I-130 Petition ("The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status."). Petitioner has filed a petition for adjustment of status, but that petition has not been approved. Because Petitioner is in the same position as hundreds of other petitioners, the Court should deny the Motion to Expedite and adjudicate the Petition in the normal course.

Id. On February 17, 2000, Petitioner was ordered removed from the United States *in absentia* when she failed to appear at her removal proceedings in Chicago, Illinois. *Id*. ¶ 5 & Ex. D.

On June 10, 2024, an Immigration Judge granted Petitioner's motion to reopen her removal proceedings without objection from DHS and further granted Petitioner's motion to terminate her removal proceedings, also without opposition from DHS. Karwowski Decl. ¶ 6 & Exs. E, F.

On August 29, 2025, ICE/ERO apprehended Petitioner and issued her a Form I-862 Notice to Appear placing her in removal proceedings. *Id*. ¶ 7 & Ex. G. Petitioner is detained at Stewart Detention Center ("SDC") in Lumpkin, Georgia, pursuant to the authority of Immigration and Nationality Act ("INA") § 235(b) (8 U.S.C. § 1225(b)). *Id.* ¶ 7. On September 11, 2025, an IJ denied Petitioner's custody redetermination request. *Id.* ¶ 8 & Ex. H. Petitioner's next master calendar hearing before the Immigration Court is currently scheduled for October 7, 2025. *Id*. ¶ 9 & Ex. I.

LEGAL FRAMEWORK

Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . . ." *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[4] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be

[4] The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.[5] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

[5] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id*. If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

ARGUMENT

Petitioner raises two claims for relief: (1) her detention "violates h[er] rights to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint," Pet. 8, and (2) her detention under 8 U.S.C. § 1225(b) violates procedural due process because she has not received an "opportunity to demonstrate she should not be detained," Pet. 10. Petitioner's due process claims should be denied. First, a plain reading of § 1225(b)(2) shows Petitioner is an "applicant for admission" and therefore subject to mandatory detention. Second, that detention complies with due process.

Further, Petitioner makes passing reference to the doctrine of *res judicata* to contend that the termination of her first removal proceedings acts to bar the institution of the current removal proceedings which are the basis for her current detention. *See* Suppl. Pet., ECF No. 5 at 10. This contention should be rejected for three reasons: (1) Petitioner has not exhausted her administrative remedies by raising this issue in the immigration court; (2) the Court lacks jurisdiction to address the argument pursuant to 8 U.S.C. § 1252(b)(9); and (3) even if the Court had jurisdiction, the claim is meritless because *res judicata* does not apply and DHS has authority to reinstitute removal proceedings.

I. Petitioner is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b)(2).

On September 5, 2025, the BIA issued a precedential decision in *In the Matter of Yajure-Hurtado*, affirming that under the plain language of § 1225(b)(2), aliens present in the United States without admission, like Petitioner here, are subject to mandatory detention without a bond hearing during their removal proceedings. 29 I. & N. Dec. 216 (BIA 2025). For the same reasons as the BIA determined § 1225(b)(2) applies in *Hurtado*, the Court should reject Petitioner's argument that § 1226(a) governs her detention instead of § 1225(b)(2).

Petitioner is an "applicant for admission" under § 1225(a)(1). *See* Karwowski Decl. ¶ 8 & Ex. H. She nonetheless argues that, unlike other applicants for admission, she cannot be subjected to § 1225(b)(2)'s mandatory-detention provision because she has been present in the interior of the United States and has a pending petition to adjust status. *See, e.g.*, Pet. 7-8. These circumstances do not change her status as an applicant for admission, and therefore she is mandatorily detained pursuant to § 1225(b)(2).

First, consider the plain text. Statutory language "is known by the company it keeps." *United States v. Dawson*, 64 F.4th 1227, 1237 (11th Cir. 2023), cert. denied, 144 S. Ct. 343 (2023) (quoting *Yates v. United States*, 574 U.S. 528, 537, (2015)). "Seeking admission" and "appl[ying] for admission," in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Congress used the simple phrase "arriving alien" throughout much of § 1225. *See, e.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently in, or recently "arriving" in, the United States from other "applicants for admission" who, like Petitioner, have been present in the United States without having been admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)'s mandatory-detention provision. 8 U.S.C. § 1225(b)(2). If Congress meant to limit § 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are "arriving in the United States" and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to "other" aliens—"in the case of an alien who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too "shall be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving," or recently arrived, aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, "shall be detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" aliens would render it redundant and without any effect.

And third, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. Unless there is a conflict, a specific provision governs over a more general provision encompassing that same matter. *See Nitro-Lift Technologies, LLC v. Howard*, 568 U.S. 17, 21 (2012); *Bloate v. United States*, 559 U.S. 196, 207–08 (2010). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

A court in Massachusetts recently confirmed that an alien, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, Civ. Action No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the "continued detention" of an alien during removal proceedings as commanded by statute. *Id.*; *see also*, *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding § 1225(b)(2) applicable to the petitioners there and denying a TRO for failure to show likelihood of success). And the BIA has long recognized that "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." *Lemus-Losa*, 25 I. & N. Dec. at 743.

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *NPR Investments, LLC ex rel. Roach v. United States*, 740 F.3d 998, 1007 (5th Cir. 2014). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, the text of a law controls over purported legislative intentions. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection. *See Hurtado*, 29 I. & N. Dec. at 222–25. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, U.S. v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

The Court should reject Petitioner's interpretation because it rewards aliens, like her, who "crossed the border unlawfully," by making them bond-eligible, unlike arriving aliens, "who present themselves for inspection at a port of entry." *Id.* In other words, aliens who presented at ports of entry in compliance with the law would be subject to mandatory detention under § 1225, while those who crossed without inspection would be eligible for bond under § 1226(a). Such an outcome would contradict Congress's stated intent in passing IIRIRA and lead to an absurd result.

II. Petitioner's detention pursuant to 8 U.S.C. § 1225(b) complies with due process.

The Supreme Court has held that 8 U.S.C. § 1226(e) allows "challenges to the statutory framework." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018). Petitioner raises such a challenge, as she argues she is "entitled to a timely and meaningful opportunity to demonstrate that she should not be detained," Pet. 10, and that her continued detention violates her substantive rights under the

Due Process Clause, Pet. 9. Because Petitioner's due process rights are limited to those provided by statute, her continued detention complies with due process.

Petitioner contends that her continued detention violates her procedural and substantive due process rights. Decades of precedent contradict this contention. As a starting point, Congress and the Executive have plenary power over the admission of non-citizens like Petitioner. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases).

"[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). "[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972).

In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this "does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("[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 the United States after an entry, irrespective of its legality.").

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of arriving aliens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien . . . has only those rights regarding admission that Congress has provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.").

This Court applied these principles and addressed the precise issue presented here in *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020). There, an applicant for admission filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. *D.A.V.V.*, 2020 WL 13240240, at *1-2. The Court denied the alien's claim because "longstanding Supreme Court precedent" makes clear that such an alien's "procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).[6]

III. Petitioner's *res judicata* argument does not provide the relief she seeks.

Petitioner makes a short comment in her Supplemental Petition wherein she argues that the current removal proceedings that are the impetus for her current detention are barred by the doctrine of *res judicata*. To the extent this is construed as an additional ground for habeas relief, it should be rejected for three reasons: (1) this Court lacks jurisdiction to review such a claim pursuant to 8 U.S.C. § 1252, which strips this Court of jurisdiction over some claims arising from immigration proceedings; (2) Petitioner has not exhausted her administrative remedies by bringing such an argument before the immigration court; and (3) Petitioner's *res judicata* theory is wrong on the merits as the INA explicitly authorizes the reinstitution of removal proceedings in this circumstance.

[6] In the context of one specific type of "applicant for admission," the "arriving alien," courts throughout the country have reached the same conclusion as this Court: non-admitted aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019). The underlying legal basis for this finding applies equally to all "applicants for admission," including Petitioner, who never "effected an entry" into the United States. *See Thuraissigiam*, 591 U.S. at 140. Whether classified as an "arriving alien" or not, Petitioner was "detained shortly after unlawful entry," and therefore never "effected an entry." *Id.*; *see* Karwowski Decl. ¶ 3. The Supreme Court was explicit that such an alien who has never "effected an entry" "has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140.

A. The Court lacks subject matter jurisdiction over this claim.

A claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Title 8 United States Code Section 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions[:] . . . [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 482 (1999) (emphasis in original).

Removal proceedings commence by filing a charging document, such as an NTA, with an Immigration Court. *See Pereida v. Wilkinson*, 592 U.S. 224, (2021) ("Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge."); *see also* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court."). An alien's detention throughout this process arises, therefore, from the Attorney General's decision to commence proceedings, and review of claims arising from such detention is barred under § 1252(g). *See Herrera-Correra v.*

United States, No. CV 08-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). Petitioner's claim regarding the applicability of *res judicata* is a claim "arising from" the decision to commence proceedings under the INA, and is thus barred by § 1252(g).

B. Petitioner's claim must be brought before the immigration court and proceed through the proper avenue for review.

Even if the Court finds that review of Petitioner's *res judicata* claim is not barred by application of 8 U.S.C. § 1252(g), this is not the proper forum for such a claim. Such a claim must be brought within the immigration proceedings and appealed through the proper channels. *See* 8 U.S.C. § 1252(b)(9) and (a)(5). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Indeed, the Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *AADC.*, 525 U.S. at 483. In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes her claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act). Further, the Eleventh Circuit

has made clear that the zipper clause is triggered when the party is "challenging . . . removal proceedings." *Canal A Media Holding*, LLC, 964 F.3d 1250. Petitioner is clearly challenging her removal proceedings by contending that they are barred by the application of *res judicata*. That claim should be first presented to the immigration court. If her claim is denied, she can appeal that decision to the BIA and following that, seek judicial review in the appropriate circuit court of appeals. *See AADC.*, 525 U.S. at 483. Petitioner's attempt to circumvent that system should be rejected.

C. Petitioner's current removal proceedings are not barred by *res judicata*.

Finally, even if the Court finds that it has jurisdiction to consider Petitioner's *res judicata* claim (which it should not), the claim is without merit. The Eleventh Circuit rejected a nearly identical claim in *Williams v. U.S. Att'y Gen.*, 284 F. App'x 712 (11th Cir. 2008). There, the petitioner's first proceedings were administratively terminated while his criminal appeal was pending. *Id*. at 714. The court held:

> *Res judicata* bars relitigation of matters decided in a prior proceeding when four requirements are met: (1) there was a final judgment on the merits, (2) the decision was rendered by a court of competent jurisdiction, (3) the parties are identical in both suits, and (4) the cause of action is the same in both suits.

Id. (citing *Jang v. United Technologies Corp.,* 206 F.3d 1147, 1149 (11th Cir. 2000)). Because the administrative termination of the proceedings was not an adjudication on the merits, *res judicata* did not bar the reinstituted removal proceedings. *Id*.

Here, Petitioner's argument incorrectly construes the IJ's termination of her original removal proceedings as a judgment on the merits. Suppl. Pet. 10. The IJ expressly noted that the termination of proceedings was "without prejudice," with the basis being it was "in the interests of judicial economy." Karwowski Decl. ¶ 6 & Ex. F. There was no determination on the validity of DHS's charge of removability, and therefore no decision on the merits. *Id*. As such, DHS is not barred from reinstituting proceedings against Petitioner, even on the same charge of removability because the requirements for *res judicata* have not been met.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 3rd day of October, 2025.

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