

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

JOSE OMAR DUARTE ESCOBAR,

Petitioner,

v.

PAUL PERRY, *et al.*,

Respondents.

Civil Action No. 3:25cv758

**MEMORANDUM IN SUPPORT OF RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's October 15, 2025 Order (ECF No. 14), Respondents, by counsel, submit this memorandum in support of their motion for summary judgment.¹

INTRODUCTION

Petitioner Jose Omar Duarte Escobar challenges the legality and constitutionality of United States Immigration and Customs Enforcement's established authority to arrest and civilly detain him pending his removal from the United States. As "[a]n alien present in the United States who has not been admitted[.]" Duarte Escobar is defined *by law* as an applicant for admission. 8 U.S.C. § 1225(a)(1). And because he is an applicant for admission who "seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted" to the United States, "[he] *shall* be detained[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, Duarte Escobar contends that he is subject to discretionary detention

¹ As directed by the Court, *see* Oct. 15, 2025 Order at 2, Respondents certify that this pleading complies with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts: this pleading "address[es] the allegations in the petition, Respondents do not assert that "any claim in the petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations;" there are no transcripts available; and there are no appellate briefs or opinions and dispositive orders of the appellate court.

under 8 U.S.C. § 1226(a) and that his detention without a bond hearing violates the Immigration and Nationality Act (“INA”), its implementing bond regulations, and the Fifth Amendment Due Process Clause.

Duarte Escobar’s challenge fails on several fronts. *First*, this Court lacks jurisdiction over the Petition because the INA precludes judicial review of Duarte Escobar’s claims. The INA forbids courts from reviewing any cause or claim arising from a decision or action to commence proceedings or adjudicate cases. Such review of Duarte Escobar’s claims may only be reviewable in a final order of removal with the court of appeals. As to the merits of Duarte Escobar’s claims, the INA clearly defines an “alien present in the United States who has not been admitted” as an “applicant for admission.” And because Duarte Escobar is present in the United States, has not been admitted, is seeking admission, and is not clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention pursuant to § 1225(b)(2)(A). As for Duarte Escobar’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 him, the Department of Homeland Security’s detention of Duarte Escobar does not violate his due process rights, even if he has lived in the United States illegally for years. Therefore, Respondents respectfully request this Court deny the Petition.²

Respondents recognize that Judges in this Court (and others) recently rejected respondents’ arguments on the issues presented below. *See, e.g., Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. 2025) (Brinkema, J.); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va.

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

Sep. 30, 2025) (Nachmanoff, J); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.). Respondents respectfully make these arguments to reserve on appeal.

STATUTORY AND REGULATORY BACKGROUND

Before proceeding to the factual background to the 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 United States 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 United States through different procedures, and, as the Supreme Court has unequivocally held, the INA *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b).

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

Any "alien present in the United States who has not been admitted or who arrives in the United States[,], whether or not at a designated port of arrival," 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 through non-expedited removal proceedings under § 1225(b)(2).³ *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

³ There are other options not relevant here for removal related to criminal aliens, *see* § 1226(c), and national security and other similar grounds, *see* § 1225(c).

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 § 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, although § 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)), § 1225(b)(2) does contain “a specific provision authorizing release from . . . detention”: the Secretary of Homeland Security “may ‘for urgent humanitarian reasons or significant public 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).

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

As the Supreme Court notes, “[s]ection 1226 *generally* governs the process of arresting and detaining [aliens present in the country] 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 § 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).

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Duarte Escobar is a 39-year-old native and citizen of Honduras. *See* Ex. 1, Declaration of James A. Mullan (“Mullan Decl.”), ¶ 5; Am. Pet. (ECF No. 9) ¶ 2.
2. On September 9, 2025, ICE Enforcement and Removal Operations officers encountered Duarte Escobar in or about Washington D.C. *See* Ex. 1, ¶ 6; Am. Pet. ¶ 2.
3. After establishing Duarte Escobar’s identification, it was determined that he had previously entered the United States without being admitted or paroled by an immigration officer. *See* Ex. 1, ¶ 6; Am Pet. ¶ 39 (“Petitioner entered the U.S. without inspection in 2008.”).
4. Duarte Escobar was placed 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 United States without admission or parole. *See* Ex. 1, ¶ 6; Am. Pet. ¶¶ 2, 3, 7.
5. Duarte Escobar is seeking admission to the United States and not clearly and beyond a doubt entitled to be admitted to the United States. *See* Ex. 1, ¶ 6.
6. On September 23, 2025, Duarte Escobar was issued a Notice to Appear, which charged him with being inadmissible to the United States (and thus removable from the United

States) under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, at the time of application for admission to the United States was not in possession of any valid entry document. *See* Ex. 1, ¶ 7; Am. Pet. Ex. A (ECF No. 9-1) (Notice to Appear).

7. Duarte Escobar was scheduled for an initial Master Calendar Hearing before the Annandale Immigration Court for October 6, 2025 *See* Ex. 1, ¶ 7.

8. On or about September 27, 2025, Duarte Escobar was transferred from Virginia to the Port Isabel Service Processing Center for detention. *See* Ex. 1, ¶ 8; Am. Pet. ¶¶ 2, 3, 7; Am. Pet. Ex. B (ECF No. 9-2).

9. As a result of this transfer, the Immigration Court transferred venue to the Port Isabel Immigration Court *See* Ex. 1, ¶ 8.

10. Duarte Escobar is currently scheduled for an initial Master Calendar Hearing for October 28, 2025, with the Port Isabel Immigration Court. *See* Ex. 1, ¶ 9.⁴

11. As of October 16, 2025, Duarte Escobar has not filed a motion for custody redetermination with the Immigration Court. *See* Ex. 1, ¶ 10.

ARGUMENT

Duarte Escobar filed an Amended Petition for a Writ of Habeas Corpus (ECF No. 9) on October 7, 2025. Duarte Escobar asserts three claims: that his mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) is unlawful, *see* Am. Pet. ¶¶ 49-51 (Count Two), that he is entitled to release on bond pursuant to § 1226(a), *id.* ¶¶ 44-48 (Count One), and that his detention without a

⁴ *See also* Executive Office for Immigration Review Automated Case Information System, DUARTE-ESCOBAR, JOSE OMAR, available at <https://acis.eoir.justice.gov/en/> (A-No. 221-471-871; Nationality: Honduras) (last visited October 20, 2025).

bond hearing violates his Fifth Amendment due process rights, *id.* ¶¶ 52-60 (Count Three). He seeks immediate release or a bond hearing. *Id.* at 12.

I. This Court Lacks Jurisdiction over the Petition as Petitioner’s Claims are Barred by the Jurisdiction-Stripping Provisions of the INA.⁵

Several provisions in the INA preclude Duarte Escobar’s claims. *See* 8 U.S.C. §§ 1252(b)(9), (g). *First*, the INA provides that, “[j]udicial 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 this subchapter shall be available only in judicial review of a final order under this section.” 8 U.S.C. § 1252(b)(9) (emphasis added). “This section, known as the ‘zipper’ clause, consolidates review of matters *arising from* removal proceedings ‘only in judicial review of a final order under this section,’ and strips courts of habeas jurisdiction over such matters.” *Afanwi v. Mukasey*, 526 F.3d 788, 796 (4th Cir. 2008), *vacated on other grounds*, 558 U.S. 801 (2009). In fact, “most claims that even relate to removal” are improper if brought before the district court. *See Reno v. Am.-Arab Anti-Discrimination Comm*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an “unmistakable zipper clause,” and defining a zipper clause as “[a] clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’”). Duarte Escobar’s claims fall within this jurisdiction-stripping provision of the INA. Because of this precedent, the Court should conclude that Duarte Escobar must bring his claims as a challenge to his detention in immigration court. *See Johnson v. Whitehead*, 647 F.3d 120, 125 (4th Cir. 2011).

⁵ As set forth in Respondents’ Response to the Court’s October 8, 2025, Order, *see* ECF No. 13, Respondents did not contest the Court’s 28 U.S.C. § 2241(a) “‘jurisdiction’ over the custodian of a habeas petitioner.” *Kanai v. McHugh*, 638 F.3d 251, 257 (4th Cir. 2011). That jurisdiction, however, “is distinct from ‘the sense of subject-matter jurisdiction of the District Court,’” *United States v. Poole*, 531 F.3d 263, 270 (4th Cir. 2008) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 434 n.7 (2004), and Respondents’ arguments here address subject-matter jurisdiction.

Second, § 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory).” *Id.* Though this section “does not sweep broadly,” *Tazu v. Attorney General U.S.*, 975 F.3d 292, 296 (3d Cir. 2020), its “narrow sweep is firm,” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). The statute was “‘directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,’” to protect “‘no deferred action’ decisions and similar discretionary decisions.” *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485). This includes deciding how an alien is detained. Therefore, this Court lacks jurisdiction over the Petition, and the Court should dismiss it.

II. Even if the Court Has Jurisdiction Over the Petition, 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 Duarte Escobar’s claims, it must determine what statute authorizes his detention. *See Abreu v. Crawford*, 2025 WL 51475, at *3-4 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.). As a *legal* matter, Duarte Escobar is properly detained under 8 U.S.C. § 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.” 8 U.S.C. § 1225(b)(2)(A); *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, 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.

There is a statutory distinction between aliens who are detained after a lawful admission into the United States and those who are present without a lawful admission. “An alien who ‘arrives in the United States,’ 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).” *Abreu*, 2025 WL 51475, at *3. “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)). 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) be “not clearly and beyond doubt entitled to be admitted into the United States.” *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*, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *3-4 (D. Mass. 2025). Duarte Escobar meets all three requirements and is thus properly detained under 8 U.S.C. § 1225(b)(2)(A).

1. Petitioner is statutorily defined as an applicant for admission.

The facts of this case make clear that Duarte Escobar is subject to mandatory detention under § 1225(b)(2) because he is an applicant for admission and DHS did not elect to utilize

expedited removal.⁶ *See* Ex. 1, Mullan Decl. ¶ 6. 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 United States who has *not been admitted*.” 8 U.S.C. § 1225(a)(1). The only requirements to be an applicant for admission, then, are to be (1) present in the United States, and (2) have not been admitted. *See id.* And the INA defines “admission” as “the *lawful entry* of the alien into the United States *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).

There is no dispute that Duarte Escobar has not been admitted to the United States. *See* Ex. 1, Mullan Decl. ¶ 6; Am. Pet. ¶ 39 (“Petitioner entered the U.S. without inspection in 2008.”). Duarte Escobar *entered* the United States *without being inspected or paroled* by an immigration official and thus does not satisfy the INA’s definition of “admission.” *See* 8 U.S.C. § 1101(a)(13). Thus, because Duarte Escobar is an “alien *present* in the United States 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; *see also Leiba v. Holder*, 699 F.3d 346, 351 (4th Cir. 2012) (noting that courts cannot ignore the plain meaning of Congress’s definition of “admitted”).

Duarte Escobar 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.”

⁶ 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).

Id. (emphasis added); *see* Ex. 1, Mullan Decl. ¶ 6. 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 United States 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). Under Petitioner's, and those courts that have agreed, *see* Am. Pet. ¶ 31, proposed reading of § 1225(b)(2), aliens who *entered* the United States *illegally* and *remain* in the United States *illegally* are afforded more due process protection (*i.e.*, a bond hearing) than those who follow the 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). However, as the Supreme Court reiterated in *Thuraissigiam*, for "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 Ekiu v. U.S.*, 142 U.S. 651, 660 (1892)) (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 Duarte Escobar is an "alien present in the United States who has not been admitted," he "shall be deemed . . . applicant[s] for admission," 8 U.S.C. § 1225(b)(1), and lawfully detained pursuant to § 1225(b)(2)(A).

2. Petitioner is actively seeking admission to the United States 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) an applicant for admission also must be “actively seeking admission into the United States.” *Luna Quispe*, 2025 WL 2783799, at *5. Because Duarte Escobar is actively 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 Gomez*, 2025 WL 2780351, at *9.

By simply being in the United States without having been admitted, Duarte Escobar is in fact actively seeking admission into the country. *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 Gomez*, 2025 WL 2780351, at *9 (“just because [the 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 of the issues in *Lopez-Sorto* was whether the petition was moot when the petitioner was removed from the United States. *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 United States

because he *resided* in the United States. *Id.* at 249 (emphasis added). The Fourth Circuit found that he could *not* reside in the United States because he was not legally allowed to be *physically present* in the United States. *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 United States without being admitted to the United States. *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 United States”) (citing *Kaplan*, 267 U.S. at 229-30). And since Duarte Escobar is physically present in the United States and appears to wish to remain here, *see* Am. Pet. ¶¶ 39, 57, he necessarily must be actively seeking admission before he can, as a legal matter, be physically present and reside in the United States. *See Lopez-Sorto*, 103 F.4th at 252; *see also Vargas Gomez*, 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 (recognizing an alien not admitted can be seeking admission by being present in the United States).

Jimenez-Rodriguez provides further guidance. 996 F.3d 190. The alien in *Jimenez-Rodriguez* entered the United States 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 United States. *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 Respondents recognize that Duarte Escobar is not (in this action) seeking a U-visa or any waiver of inadmissibility, Duarte Escobar, like the alien in *Jimenez-Rodriguez*, entered the United States without inspection in 2008 and has resided here since then. *See* Ex. 1, Mullan Decl. ¶ 6; Am. Pet. ¶ 39. 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. Here too, then, “[b]ecause [Duarte Escobar] was never lawfully admitted, he qualifies as someone ‘seeking admission.’” *Jimenez-Rodriguez*, 996 F.3d at 194 n.2. And because Duarte Escobar is seeking admission, he is properly detained under § 1225(b)(2)(A). *Vargas Gomez*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2.

The Court’s recent decision in *Hasan v. Crawford* is inapposite to the facts of this case. In *Hasan*, the court found petitioner to be subject to discretionary detention under § 1226(a) instead of § 1225(b). *See* 2025 WL 2682255, at *5-9. Recognizing that “§ 1226(a) sets forth ‘the default rule’ for detaining and removing aliens ‘already present in the United States,’” *id.* at *6 (quoting *Jennings*, 583 U.S. at 303) (citing *Abreu*, 2025 WL 51475, at * 3), the Court found “*the federal respondents’ treatment of Hasan since he arrived in the United States*” (*i.e.*, as being subject to § 1226(a)) “*unequivocally demonstrates he is detained pursuant to § 1226(a).*” *Id.* at *7 (emphasis added). The court further reasoned that federal respondents’ reading of § 1225(b)(2) “would render [§ 1226(c)(1)] superfluous[.]” *Id.* at *8 (quoting *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010)). Therefore, the *Hasan* petitioner was subject to § 1226(a) detention. *See id.* at 9.

In determining whether an applicant for admission is subject to mandatory detention under § 1225(b)(2)(A), “the examining immigration officer [must] determine[] that [the applicant] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Id.* The Court in *Hasan* failed to conduct any analysis as to whether petitioner was seeking admission or

was not clearly and beyond a doubt entitled to be admitted. *See generally, Hasan*, 2025 WL 2682255, at *5-9. Here, when Duarte Escobar was detained, he had (and still has) not been admitted, was seeking admission, and was not clearly and beyond a doubt entitled to be admitted. Therefore, ICE arrested and detained Duarte Escobar pursuant to its statutory obligations *mandating* his detention and thus he may not be released on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Jennings*, 583 U.S. at 837 (“Section 1225(b)(2) is broader. It serves as a *catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)”) (emphasis added). And Duarte Escobar, unlike the *Hasan* petitioner, has never been treated by the federal government as discretionarily detained pursuant to § 1226(a). Rather, he has always been detained under § 1225(b)(2)(A). *See* Ex. 1, Mullan Decl. ¶ 6.

Respondents’ reading of § 1225(b)(2)(A) does not render 8 U.S.C. § 1226(c) superfluous. *See Vargas Gomez*, 2025 WL 2780351, at *9-10; *Chavez*, 2025 WL 2730228, at *5; *but see Hasan*, 2025 WL 2682255, at *8. 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, even lawful permanent residents who are inadmissible at the time of their initial entry to the United States 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)). Section 1226(c)(1) 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 he 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).

Duarte Escobar asserts that aliens who entered the United States 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. *See* Am. Pet. ¶¶ 39, 46. That argument 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 v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("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) (internal quotations and citation omitted). The 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).

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, Duarte Escobar 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* Ex. 1, Mullan Decl. ¶ 7; Am. Pet. Ex. A (ECF No. 9-1) (Notice to Appear). And since he is not charged with any § 1227 deportability grounds, he cannot be (and is not being) detained under § 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 [] § 1227”).

Recently, other jurists of this Court reasoned 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*, both this Court and *Quispe-Ardiles* distinguished “aliens seeking admission into the country,” who are subject to § 1225(b) detention, and “aliens already in the country” who are subject to removal proceedings. *Luna Quispe*, 2025 WL 2783799, at *6 (citing *Jennings*, 583 U.S. at 289); *see* 2025 WL 2783800, at *5 (same). 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 Gomez*, 2025 WL 2780351, at *9. And while Duarte Escobar is an “alien already in the country,” he is also an “alien seeking admission into

the country,”⁷ as set forth above. *Jennings*, 583 U.S. at 289. Therefore, under the rules of statutory interpretation, Duarte Escobar 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 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 the United States 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). The court thus 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 United States 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).

But the *Quispe-Ardiles* 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

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).

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 United States, from a foreign port or place”), *with id.* § 1101(a)(13)(A) (2025) (defining “admission” as “the lawful entry of the alien into the United States 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 become “the key word.”

Vartelas, 566 U.S. at 262. And reading additional language in *Leng May Ma* with the now-applicable term “admission” instead of the then-applicable term “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 United States” *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*, 142 U.S. at 661). Therefore, contrary to *Quispe-Ardiles*, it seems that it *was* Congress’ intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Duarte Escobar. *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. Respondents respectfully disagree. An “arriving alien” is a sub-class 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 United States 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 United States 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 have found 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* Duarte Escobar 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 § 1225(b)(2)(A) and is thus properly detained under the INA.

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

To assess the merits of Duarte Escobar’s constitutional claim, it is necessary to determine first what due process rights Duarte Escobar has. The INA *mandates* Duarte Escobar’s detention pursuant to 8 U.S.C. § 1225(b)(2)(A), as set forth above. And as 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. Duarte Escobar has not been admitted to the United States, and for any alien who has “not been admitted into the country pursuant to law,” the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (internal quotation marks and citation omitted). Other jurists of this Court 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 United States.” *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 United States, 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 United States,” 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. 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 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 Duarte Escobar 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.

* * *

To deny the Petition and enter summary judgment for the Respondents, this Court need only follow the Supreme Court’s instructions. Granting the Petition, by contrast, would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly rejected. *See Jennings*, 583 U.S. at 297 (“nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.”).

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 that Duarte Escobar’s due process rights extend no further than what the INA provides. Were the Court to find that more process is due, Respondents contend that such due process analysis favors Duarte Escobar’s continued detention. Thus, his claim that due process entitles him to something more must fail.

Duarte Escobar begins his due process claim by claiming freedom from physical confinement is a fundamental right and thus merits strict scrutiny. *See Am. Pet.* ¶ 56. 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. 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.

The governing procedural due process framework confirms that Duarte Escobar’s detention satisfies an applicant for admission’s due process rights. 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 Duarte Escobar’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. Respondents recognize that Duarte Escobar’s “interest in being free from physical detention is the most elemental of liberty interests.” Am. Pet. ¶ 56 (quotation marks and citation omitted). But as an applicant for admission, Duarte Escobar has a less compelling liberty interest

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 have 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, Duarte Escobar’s private liberty interest is diminished when his release is available on the condition that he leaves the United States. *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”).

An alien’s private interest is even more diminished when release into the United States would be an assistance to an ongoing violation of United States 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 United States 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 United States 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 United States law). Accordingly, the first *Mathews* factor weighs in favor of the government.

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

To the extent that Duarte Escobar claims that his detention will be indefinite and thus heightens the due process concerns, the Fourth Circuit has made clear that “[t]he absence of a date certain—imminent or not—for the conclusion of . . . proceedings is of no moment.”

Castaneda v. Perry, 95 F.4th 750, 758 (4th Cir. 2024). What may happen in the future is likewise immaterial to this proceeding, as Duarte Escobar may challenge only his *present* detention. *See*

D.B. v. Cardall, 826 F.3d 721, 734 n.10 (4th Cir. 2016) (“the question before the district court . . . [is] whether [the petitioner’s] *current detention* complies with federal statutes and the Constitution” (emphasis added)); *Doe v. Perry*, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022). Therefore, the second *Mathews* factor favors the government.

3. Regarding the third factor, the government’s interests in mandatory detention pursuant to § 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 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.

Additionally, “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 (“The government’s interest in efficient administration of the immigration laws . . . is weighty.”). Mandatory detention remedies this risk by “increasing the chance that, if ordered removed, [Petitioner] will be successfully removed.” *Demore*, 538 U.S. at 528. Duarte Escobar’s mandatory detention indisputably serves each of these interests. And as the Supreme Court has made clear, civil immigration detention is “constitutionally valid” as long as it “serve[s] its purported immigration purpose.” *Demore*, 538 U.S. at 523, 527.

* * *

For all of these reasons, all three *Mathews* factors favor the government, and this Court should therefore enter summary judgment for respondents and deny the 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”); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n.3 (BIA 2016). 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”).

The Supreme Court perceived no constitutional difficulty in assigning the burden of proof to an alien facing prolonged detention to make a case for bond. After the presumptively reasonable six-month detention period following a final order of removal, it is up to *the alien* to “provide[] good reason to believe that there is no significant likelihood of removal in the

reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701; see *Ming Hui Lu v. Lynch*, 2016 WL 375053, at *6 (E.D. Va. Jan. 29, 2016). Only then is the government required to “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.

Even the dissent in *Jennings*, which would have interpreted the INA’s detention provisions as authorizing bond hearings, concluded that any such bond hearing “should take place in accordance with customary rules of procedure and burdens of proof.” 583 U.S. at 356 (Breyer, J., dissenting). The Fourth Circuit reached a similar conclusion. See *Guzman Chavez v. Hott*, 940 F.3d 867, 874, 882 (4th Cir. 2019), *rev’d on other grounds*, *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021). And several decisions from this Court ordering bond hearings for detained aliens have declined to adjust the usual burden-of-proof scheme. See *Cardona Tejada v. Crawford*, 2021 WL 2909587, at *4 n.9 (E.D. Va. May 19, 2021); *Mauricio-Vasquez*, 2017 WL 1476349, at *6. Therefore, if this Court were to grant the Petition, it should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations.⁸

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court decline to issue a Writ of Habeas Corpus and deny the Petition.

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⁸ If the Court shifts the burden of proof to the government, the Court should at the very least require only proof “to the satisfaction of the [IJ]” rather than 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)).

Dated: October 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 20, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/

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