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

BRAYAN JOSUE LOPEZ SARMIENTO, *et al.*, *Petitioners*, v. KRISTI NOEM, *et al.*, *Respondents.*	Case No. 1:25-cv-1644 (AJT/WBP)

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

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INTRODUCTION

Petitioners, three of whom have been accorded special immigrant juvenile status ("SIJS"), challenge the legality and constitutionality of United States ("U.S.") Immigration and Customs Enforcement's ("ICE's") established authority to civilly detain him pending their removal from the U.S. As "alien[s] present in the [U.S.] who [have] not been admitted[,]" Petitioners are defined *by law* as applicants for admission. 8 U.S.C. § 1225(a)(1). And because Petitioners are applicants for admission "they *shall* be detained[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, Petitioners contend that they are subject to discretionary detention under 8 U.S.C. § 1226(a), and such detention without a bond hearing violates the Immigration and Nationality Act ("INA"), its implementing regulations, the Administrative Procedure Act ("APA"), and the Fifth Amendment Due Process Clause.

Petitioners' challenge fails on several fronts.[1] *First*, the INA clearly defines an "alien present in the U.S. who has not been admitted" as an "applicant for admission." And because Petitioners are present in the U.S., have not been admitted, are seeking admission, and not clearly and beyond a doubt entitled to be admitted, they are subject to mandatory detention pursuant to § 1225(b)(2)(A). As for Petitioners' constitutional claims, the due process afforded to applicants for admission is that which is provided by the INA. And since no additional process is due to the Petitioners, the Department of

[1] Federal Respondents recognize this Court and others recently rejected Federal Respondents' arguments on the issues presented below. *See Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sep. 30, 2025) (Nachmanoff, J); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. 2025) (Brinkema, J.); *see also Singh v. Bondi*, 1:25-cv-1525, Dkt. 8 (E.D. Va. Oct. 8, 2025) (Nachmanoff, J.); *Lopez-Sanabria v. Bondi*, 1:25-cv-1511, Dkt. 9 (E.D. Va. Oct. 3, 2025) (same); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16 (E.D. Va. Oct. 2, 2025) (same); Maldonado Merlos v. Noem, 1:25-cv-1645, Dkt. 11 (E.D. Va. Oct. 9, 2025) (Brinkema, J.); *Guerra Leon v. Noem*, 1:25-cv-1634, Dkt. 12 (E.D. Va. Oct. 8) (same); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (same); *Diaz Gonzalez v. Lyons*, 1:25-cv-1583, Dkt. 8 (E.D. Va. Oct. 1, 2025) (same); *Gomez Alonzo v. Lyons*, 1:25-cv-1587, Dkt. 16 (E.D. Va. Oct. 1, 2025) (same); *Vargas Nunez v. Lyons*, 1:25-cv-1574, Dkt. 10 (E.D. Va. Oct. 1, 2025) (same). Federal Respondents respectfully disagree with such decisions and reserve the foregoing arguments for appeal.

Homeland Security's ("DHS's") detention of Petitioners does not violate Petitioners' due process rights, even if they have lived in the U.S. illegally for years. Therefore, Federal Respondents respectfully request this Court deny the instant Amended Petition.

Federal Respondents recognize that Petitioners have also filed a class action Complaint for declaratory relief. *See* Doc. No. 4, ¶¶ 77-86 (class allegations). Because a Habeas Petition is not civil in nature, Federal Respondents will not address Petitioners' class action Complaint in this filing. Federal Respondents will respond to Petitioners' class action Complaint pursuant to the normal timing requirements in Fed. R. Civ. P. 12(b), which requires Federal Respondents to respond to the Complaint on or before Monday, December 1, 2025.

BACKGROUND

A. Statutory and Regulatory Background

The statutory and regulatory provisions governing petitioner's civil immigration detention have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Important to any understanding of this statutory scheme is the concept of "admission." An "admission" (or "admitted") is "the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b) (emphasis added).

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

Any "alien present in the [U.S.] who has not been admitted or who arrives in the U.S." whether or not at a port of entry is treated an "an applicant for admission." 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways, either

through expedited removal under § 1225(b)(1), or those handled through non-expedited removal proceedings under § 1225(b)(2).[2] *Hasan v. Crawford*, --- F. Supp. 3d ---, 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[3]), (b)(2) (other applicants for admission). Section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission "*shall be detained* for a [removal] proceeding" if the "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see Aslanturk v. Hott*, 459 F. Supp. 3d 681, 693 (E.D. Va. 2020) (Alston, J.).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b)(2) does not provide for bond hearings, *see id.* at 297–303; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security (hereinafter, the "Secretary") "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings* at 300 (quoting 8

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

[3] An arriving alien is *not* the same as an applicant for admission. Rather, an arriving alien is a sub-class of aliens within applicants for admission. In short, an alien can be deemed an arriving alien if an applicant for admission is: (1) "coming or attempting to come into the [U.S.] at a port-of-entry," (2) "seeking transit through the [U.S.] at a port-of-entry," or (3) "interdicted in international or [U.S.] waters and brought into the [U.S.] by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 C.F.R. §§ 1.2, 1001.1(q).

U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). "[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s]." 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

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

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

3. Special Immigrant Juvenile Status ("SIJS")

The INA recognizes the following class of "special immigrants" present in the U.S. *See* 8 U.S.C. § 1101(a)(27)(J)(i)-(iii). To obtain SIJS under this provision, an alien must: (1) be under 21 years of age at the time of filing a petition for SIJS status (i.e., a Form I-360); (2) be unmarried at the time of filing and adjudication; (3) be physically present in the United States; (4) be subject to a qualifying juvenile court order; and (5) "[o]btain[] consent from the Secretary of Homeland Security to classification as a special immigrant juvenile." 8 C.F.R. § 204.11(b); *see id.* § 204.11(c)-(d).

There are two primary benefits of SIJS: The alien becomes eligible for adjustment of immigration status to that of legal permanent resident ("LPR")—a benefit within the federal government's discretion to confer—and certain statutory grounds of inadmissibility are waived or

waivable in that context and with respect to deportability. *See* 8 U.S.C. §§ 1227(c), 1255(a), (h); *Reyes v. Cissna*, 737 F. App'x 140, 142 (4th Cir. 2018). Regarding adjustment of status, an alien with SIJ status is "deemed . . . to have been *paroled* into the [U.S.]" 8 U.S.C. § 1255(h)(1) (emphasis added). And because of a lack of visa numbers, U.S. Citizenship and Immigration Services ("USCIS") had a policy granting deferred action to aliens with SIJS. *See* USCIS, Policy Alert PA-2022-10 (Mar. 7, 2022)[4]; but see USCIS Policy Alert PA-2025-07 (June 6, 2025)[5] (reversing policy). "Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." USCIS Policy Manual, Vol. 1 ch. 2 Part A.4 (current as of Sep. 26, 2025)[6]. "USCIS reviews deferred action requests on a case-by-case basis." *Id.* "[D]eferred action is not a lawful immigration status." Id. (emphasis added). And USCIS has the right to terminate grants of deferred action as a matter of discretion. *See id.* Vol. 6 ch. 4 Part G.2 (current as of Sep. 26, 2025)[7]

SIJS may be revoked automatically if either of two events occurs before final adjustment to LPR status: (1) "[r]eunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under State law," or (2) "[a]dministrative or judicial proceedings determine that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of their parent(s)." 8 C.F.R. §

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[4] Retrievable at: https://www.uscis.gov/sites/default/files/document/policy manual-updates/20220307-SIJAndDeferredAction.pdf. (last accessed Oct. 10, 2025).

[5] Retrievable at: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf. (last accessed Oct. 10, 2025).

[6] Retrievable at: https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2#footnotelink-25 (last accessed Oct. 10, 2025).

[7] Retrievable at: https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (last accessed Oct. 10, 2025).

204.11(j)(1). Otherwise, USCIS may revoke SIJS on notice "for good and sufficient cause" in compliance with 8 C.F.R. § 205.2. *Id.* § 204.11(j)(2).

B. Petitioners' Immigration History[8]

All Petitioners entered the U.S. without admission or parole. *See* Federal Respondents' Exhibit ("FREX") 1, Declaration of James A. Mullan ¶¶ 6, 22, 35, 47. And all Petitioners (besides Petitioner Josue Rodriguez-Argueta) were accorded SIJS. *Id.* ¶¶ 17, 30, 55; *see* Am. Pet. ¶ 50 ("Josue's . . . application was denied"). Petitioner Josue Rodriguez refiled his SIJS application, and it is currently pending with USCIS Am. Pet. ¶ 50. Petitioners Jhonatan Rodriguez-Argueta and Wilson Zelaya Chavarria have been granted deferred action. FREX 1 ¶¶ 30, 55. On August 6, 2025, Petitioner Lopez-Sarmiento's deferred action was terminated[9]. *See* Am. Pet. ¶ 73; FREX 2.

In recent months, Petitioners were arrested and detained pursuant to 8 U.S.C. § 1225(b)(2)(A) as applicants for admission because, after establishing Petitioners' identities, ICE officers confirmed that Petitioners were present in the U.S. without being admitted or parole, and that they were seeking admission and not clearly and beyond a doubt entitled to be admitted to the U.S. *Id.* ¶¶ 7, 23, 36, 49. They were arrested without incident. *Id.* Each Petitioner was issued a Notice to Appear ("NTA") which charged them[10] with being inadmissible to the U.S., and thus removable from the U.S., *see* 8 U.S.C. § 1229a(e)(2), under 8 U.S.C. § 1182(a)(6)(A)(i) as aliens present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the

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[8] For the purposes of space, Federal Respondents only address the common facts of all the Petitioners. A more detailed history of Petitioners' immigration history can be found in declaration by James A. Mullan, which is attached as an exhibit to this filing. *See* FREX 1.

[9] Federal Respondents emphasize that this Court cannot review the revocation of deferred action as it is committed to agency discretion. *See* 8 U.S.C. § 1252(a)(2)(B)(ii); 5 U.S.C. § 701(a)(2).

[10] Petitioner Lopez-Sarmiento was also charged with being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an alien who, at the time of application for admission to the U.S., was not in possession of any valid entry document. FREX 1 ¶ 16.

Attorney General. FREX 1 ¶¶ 8, 24, 37, 50. Petitioners also requested bond hearings in front of an IJ. *Id.* ¶¶ 10, 25, 38, 52. All requests were eventually denied for lack of jurisdiction because Petitioners were deemed applicants for admission. *Id.* ¶¶ 15, 29, 42, 54; *see Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner Brayan Lopez-Sarmiento has been detained since August 5, 2025. FREX 1 ¶ 7. Petitioner Wilson Zelaya Chavarria has been detained since August 19, 2025. *Id.* ¶ 49. And finally, Petitioners Jhonatan Rodriguez-Argueta and Josue Rodriguez-Argueta have been detained since August 21, 2025. *Id.* ¶¶ 23; 36.

C. The Instant Petition

Seeking[11] immediate release, Petitioner Lopez-Sarmiento filed a Petition for a Writ of Habeas Corpus on September 30, 2025. *See* Doc. No. 1. On October 2, 2025, Petitioner Lopez-Sarmiento filed an Amended Petition for a Writ of Habeas Corpus and Class Action Complaint, adding the other three-named Petitioners, and all others similarly situated. Doc. No. 4. Petitioners bring four claims of relief. *See* Am. Pet. ¶¶ 87-108. *First*, Petitioners claim DHS violated the INA, its implementing regulations, and the APA by subjecting Petitioners to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and not providing them a bond hearing. *Id.* ¶¶ 87-91 (Count One), 92-98 (Count Two), 99-101 (Count Three). *Second*, Petitioners claim that their detention without a bond hearing violates their due process rights. *Id.* ¶¶ 102-108 (Count Four). This Court ordered Federal Respondents to respond to the Amended Petition on or before October 10, 2025, at 5:00 p.m. Doc. No. 11. Federal Respondents-Defendants' answer or first responsive pleading to the class action complaint is due on or before December 1, 2025. *See supra*, at 2.

[11] Despite this verbiage, at no point during the substance of their Petition does Petitioners provide any basis – let alone argument – that could justify their outright release from immigration custody. To the contrary, the entirety of their Petition is premised upon their position that they should be entitled to seek discretionary release from the presiding IJ on bond. Indeed, Petitioners only request a bond hearing. *See* Pet., Prayer for Relief.

ARGUMENT

I. Petitioners' Detention is Lawful

Before this Court can analyze Petitioners' claims, it must determine what statute authorizes Petitioners' detention. *See Luna Quispe v. Crawford*, 2025 WL 2783799, at *4 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Abreu v. Crawford*, 2025 WL 51475, at *3-4 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.). As a *legal* matter, Petitioners are detained under 8 U.S.C. § 1225(b)(2)(A) as they "[have] never been admitted into the [U.S.]" *Romero*, 2025 WL 2490659, at *3 (citing 8 U.S.C. § 1225(a)(1)); *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025) (emphasis added); *but see Hasan*, 2025 WL 2682255, at *9.

There is a statutory distinction between aliens who are detained after a lawful admission into the U.S. and those who are present without a lawful admission. "An alien who 'arrives in the [U.S.],' or is 'present' in this county but 'has not been admitted,' is considered an 'applicant for admission' under 8 U.S.C. § 1225(a)(1)." *Hasan*, 2025 WL 2682255, at *9. "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Luna Quispe*, 2025 WL 2783799, at *4 (quoting *Olaya Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025) (Trenga, J.); *see Jennings*, 583 U.S. at 287 (section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added). "Both sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission." *Luna Quispe*, 2025 WL 2783799, at *4. "Both provisions require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude." *Olaya Rodriguez*, 2025 WL 2490670, at *2 (citing 8 U.S.C. §§ 1225(b)(1), (2)); *see Aslanturk*, 459 F. Supp.3d at 694.

A. Because Petitioners are statutorily defined as applicants for admission, they *shall* be detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

The factual circumstances of this case make clear Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because they are applicants for admission and DHS did not elect to utilize expedited removal.[12] *See* FREX 1 ¶¶ 6, 22, 35, 47; *see also Luna Quispe*, 2025 WL 2783799, at *4 (quoting *Olaya Rodriguez*, 2025 WL 2490670, at *2) ("Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2).").

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

There is no dispute that Petitioners have not been admitted to the U.S. *See* FREX 1 ¶¶ 7, 23, 36, 49. Petitioners *entered* the U.S. *without being inspected or paroled* by an immigration official, thus they do not satisfy the definition of "admission." *See* 8 U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). Thus, because Petitioners are "alien[s] *present* in the [U.S.] who [have] *not been admitted*[,]" they are, *by law*, "applicant[s] for admission." 8 U.S.C. § 1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025); *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").

[12] 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).

Petitioners are detained pursuant to § 1225(b)(2)(A) because they each are "an *applicant for admission*."[13] *Id.* (emphasis added); *see* FREX 1 ¶¶ 7, 23, 36, 49. Indeed, Congress' intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), *see* Pub. L. No. 104-208, 110 Stat. 3009 (1996), was to make sure that those who entered the U.S. without inspection did not have more procedural or substantive due process rights than those who present themselves to authorities for inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). Under other courts', *see Lopez Sanabria*, 1:25-cv-1511, Order at 3 n.5 (citing cases), readings of § 1225(b)(2), aliens who *entered* the U.S. *illegally* and *remain* in the U.S. *illegally* are afforded more due process protection (*i.e.*, a bond hearing) than those who follow U.S. law and seek *lawful entry* at the border or a port-of-entry. *See* 8 U.S.C. § 1225(a)(3) ("All aliens [] who are applicants for admission or otherwise seeking admission . . . *shall* be inspected by immigration officers") (emphasis added); *id.* § 1325 (criminalizing improper entry by an alien). As the Supreme Court reiterated in *Thuraissigiam*, "foreigners who have never been naturalized . . . *nor even been admitted* into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law*." 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added); *see id.* at 139 (noting the executive has plenary power to decide whether an alien should be *admitted*) (emphasis added).

Therefore, because Petitioners are "alien[s] present in the [U.S.] who [have] not been admitted[,]" they "shall be deemed . . . applicant[s] for admission." 8 U.S.C. § 1225(b)(1).

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[13] The recent decisions in *Hasan v. Crawford* and *Quispe-Ardiles v. Noem* failed to analyze whether petitioners were in fact seeking admission and beyond a reasonable doubt not admitted to the U.S. *See Hasan*, 2025 WL 2682255, at *5-9; *Quispe-Ardiles*, 2025 WL 2783800, at *4-7. Similarly, another district court decision, *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *8-10 (D. Md. Aug. 24, 2025) is inconsistent with the definition of "applicant for admission." An "applicant for admission" is either "[a]n alien present in the [U.S.] who has not been admitted *or* who arrives in the [U.S.]" 8 U.S.C. § 1225(a)(1) (emphasis added).

B. As Petitioners are clearly applicants for admission seeking admission and not clearly and beyond a doubt entitled to be admitted; they are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

As stated, *supra* Part II.A, Petitioners are defined by law as applicants for admission and thus subject to mandatory detention. *See* 8 U.S.C. §§ 1225(a)(1) ("an alien *present* in the [U.S.] who has *not been admitted*") (emphasis added); 1225(b)(2)(A) ("the alien *shall* be detained") (emphasis added). In addition to being an applicant for admission, this Court recently found that to be detained pursuant to § 1225(b)(2)(A), such applicant for admission must be "actively seeking admission into the [U.S.]." *Luna Quispe*, 2025 WL 2783799, at *5; *see also Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4 (D. Mass. 2025). And because Petitioner 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).

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

In *Lopez-Sorto*, the Fourth Circuit denied a petition for review of a BIA order affirming an IJ's decision to deny an alien's application for deferral of removal. 103 F.4th at 247. One of the issues in

Lopez-Sorto was whether the petition was moot when the petitioner was removed from the U.S. *See id.* at 248. The petitioner contended that his petition was not moot because of an ICE directive that allegedly required him to be returned to the U.S because he *resided* in the U.S. *Id.* at 249 (emphasis added). The Fourth Circuit found that he could *not* reside in the U.S. because he was not legally allowed to be *physically present* in the U.S. *Id.* at 250-51 (emphasis added). The Court reached this reasoning by analyzing the definition of "admission," and found that an alien cannot be, under immigration law, physically present in the U.S. without being admitted to the U.S. *Id.* at 252; *see id.* ("in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]") (citing *Kaplan*, 267 U.S. at 229-30). And since Petitioners seek to establish a life in the U.S., they must be actively seeking admission before they can, as a legal matter, be physically present and reside in the U.S. *See Lopez-Sorto*, 103 F.4th at 252; *see also Vargas Lopez*, 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 U.S.).

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

Although Federal Respondents recognize that Petitioners here are not seeking U-visas or any waivers of inadmissibility, Petitioners, like the alien in *Jimenez-Rodriguez*, entered the U.S. without inspection and have never left the U.S. *See* FREX 1 ¶¶ 6, 22, 35, 47. The Fourth Circuit determined

that the petitioner in *Jimenez-Rodriguez* was "seeking admission" because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. Therefore, it follows that "[b]ecause [Petitioners] [were] never lawfully admitted, [they] qualif[y] as someone seeking admission[.]" *Jimenez-Rodriguez*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (internal quotations omitted) (emphasis added); *see also Robers v. U.S.*, 572 U.S. 639, 643 (2014) ("Generally, identical words used in different parts of the same statute are . . . presumed to have the same meaning." (quoting *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006)) (internal quotation marks omitted)). And because Petitioners are seeking admission to the U.S., they are properly detained under § 1225(b)(2)(A).[14] *Vargas Lopez*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2.

Throughout their Petition, Petitioners assert that aliens who entered the U.S. without admission or parole are not subject to § 1225(b)(2)(A) and instead are afforded discretionary detention under § 1226(a) which allows for bond.[15] *See* Am. Pet. ¶¶ 38, 88-90, 94-98. Petitioners are mistaken for several reasons. As a matter of statutory construction, § 1225(b)(2)(A) governs because it contains

[14] In some of his orders, Judge Nachmanoff claims "Federal Respondents' argument misreads *Jimenez-Rodriguez*" and found that "the Fourth Circuit did not conclude that all noncitizens who are present in the United States but have not been lawfully admitted are "seeking admission" within the meaning of § 1225(b)(2)(A)." *Lopez Sanabria*, 1:25-cv-1511, Order at 3 n.4. Federal Respondents agree that the Fourth Circuit did not hold all aliens who are present in the U.S. but have not been lawfully admitted are "seeking admission." However, the Court's explanation of what it means to be "seeking admission" is important in understanding how courts should treat such term throughout the statute. Such application of "seeking admission" should be used consistently throughout the INA. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (looking to how a disputed term or phrase is used in other provisions of the statute to determine its meaning).

[15] To further support his position, Petitioner cites to a Federal Register Notice, *see* Pet. ¶ 94, which directly state that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Such statement refers to applicant for admissions in general, and does not apply to those who are seeking admission [or] not clearly beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), which are required for mandatory detention under § 1225(b)(2)(A). Indeed, Federal Respondents' reading of § 1225(b)(2)(A) "comports with Congress' addition of § 1225(a)(1) by IIRIRA[.]" *Chavez*, 2025 WL 2730228, at *4.

specific mandatory language, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s general discretionary and permissive language, *see id.* ("an alien *may* be arrested and detained") (emphasis added). *See Morales*, 504 U.S. at 384 ("it is a commonplace of statutory construction that the specific governs the general"). And as the Fourth Circuit makes clear, "a general provision should not be applied when doing so would undermine limitations created by a more specific provision." *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016) (quoting *Coady v. Vaughn*, 251 F.3d 480, 484 (4th Cir. 2001)) (internal quotations omitted). Such contrary position that § 1226(a) governs "would render mandatory detention under § 1225(b) meaningless." *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).

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, Petitioners are not subject to the deportability grounds at 8 U.S.C. § 1227; they are charged with being *inadmissible* under 8 U.S.C. § 1182. *See* FREX 1 ¶¶ 8, 24, 37, 50. And since they are not charged with any deportability grounds found in § 1227, they cannot be 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").

Federal Respondents' reading of § 1225(b)(2)(A) does not render 8 U.S.C. § 1226(c) superfluous. *See Vargas Lopez*, 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, lawful permanent residents who are in inadmissible at the time of their

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

Finally, Petitioners are clearly "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). It is undisputed that Petitioners entered the U.S. without inspection. *See* FREX 1 ¶¶ 6, 22, 35, 47. That makes them inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being aliens present in the U.S. without being admitted or paroled. And by being inadmissible, they cannot be admitted. *See id.* This is true even if Petitioners seek any relief from removal, and it is "purely speculative" whether Petitioner will obtain relief from removal. *Mauricio-Vasquez v. Crawford*, 2017 WL 1476349, at *5 (E.D. Va. Apr. 24, 2017).

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

C. The reliance on *Hasan v. Crawford* by other courts in this District is misplaced.

Several jurists of this Court have relied on and incorporated Judge Brinkema's recent decision, *Hasan v. Crawford*, in their opinions and orders disagreeing with Federal Respondents' position that aliens like Petitioners are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Quispe-Ardiles*, 2025 WL 2783800; *Luna Quispe*, 2025 WL 2783799; *see also supra*, at 1 n.1 (citing cases).

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* --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Recognizing that "§ 1226(a) sets forth 'the default rule' for detaining and removing aliens 'already present in the [U.S.][,]'" *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 [U.S.]*" (*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 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*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Here, when Petitioners were detained, Petitioners had (and still have) not been admitted, are seeking admission, and are not clearly and beyond a doubt entitled to be admitted. *See* FREX 1 ¶¶ 7, 23, 36,

49. Therefore, ICE arrested and detained Petitioners pursuant to its statutory obligations *mandating* their detention, and thus 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).

The '[m]ere issuance of an arrest warrant does not endow an [IJ] with authority to set bond for an alien who falls under section [1225](b)(2)(A)[.]" *Matter of Yajure Hurtado*, 29 I. & N. at 227 (citing *Matter of A-W-*, 25 I. & N. Dec. 45, at 46 (BIA 2009); *Matter of D-J-*, 23 I. & N. 572, 575 (A.G. 2003)). When Petitioners were detained, Petitioners were "seeking admission [and] [] not clearly and beyond a doubt entitled to be admitted to the U.S." 8 U.S.C. § 1225(b)(2)(A); *see* FREX 1 ¶¶ 7, 12, 17, 21, 30, 38, 50, 58. By *law*, they therefore are subject to mandatory detention pursuant to § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(b)(2)(A) ("in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained") (emphasis added); *Olaya Rodriguez*, 2025 WL 2490670, at *3; *Pipa-Aquise*, 2025 WL 2490657, at *1 n.2; *see also 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"); *Leiba*, 699 F.3d at 351 (noting that courts cannot ignore the plain meaning of Congress's definition of "admitted"). ICE arrested and detained Petitioners pursuant to its statutory obligations *mandating* his detention. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *Vargas Lopez*, 2025 WL 2780351, at *9; *Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2.

This Court and others recently held that "Respondents' position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a)." *Luna Quispe*, 2025 WL 2783799, at *6; *see Quispe-Ardiles*, 2025 WL 2783800, at *5. In analyzing the "default rule" as construed by *Jennings*, both *Luna Quispe* 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 Quispe-Ardiles*, 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. *Jennings*, 583 U.S. at 289; *see Vargas Lopez*, 2025 WL 2780351, at *9. And while Petitioner is an "alien already in the country[16]," he is also an "alien seeking admission into the country." *Jennings*, 583 U.S. at 289; *see supra*. Therefore, under the rules of statutory interpretation, Petitioners are detained pursuant to § 1225(b)(2)(A)'s *mandatory* framework, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s *discretionary* framework, *see id.* ("an alien *may* be . . . detained") (emphasis added). *See Morales*, 504 U.S. at 384 ("it is a commonplace of statutory construction that the specific governs the general").

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

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

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

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

But the court's reliance on *Leng May Ma* is misplaced. At the time *Leng May Ma* was decided, an "admission" was not defined in the INA like it is today. *See generally* 8 U.S.C. § 1101(a). At that time, the term "entry" was used in lieu of the word "admission." *Compare id.* § 1101(a)(13) (1988) (defining "entry" as "any coming of an alien into the [U.S.], from a foreign port or place"), *with id.* § 1101(a)(13)(A) (2025) (defining "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer"); *see Vartelas v. Holder*, 566 U.S. 257, 261-63 (2012) (explaining "entry" and "admission"). Once Congress enacted the IIRIRA, admission become "the key word." *Vartelas*, 566 U.S. at 262. Thus, reading additional language in *Leng May Ma* with the adoption of the term "admission" instead of "entry," the case goes on to state that "the detention of an alien in custody pending determination of his admissibility does not legally constitute an [***admission***] though the alien is physically within the [U.S.]" *Leng May Ma*, 357 U.S. at 188 (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 215 (1953); *U.S. v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu v. U.S.*, 142 U.S. 651, 661 (1892)). Therefore, it seems it *was* Congress' intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Petitioners. *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.

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

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

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

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

D. The due process awarded to the Petitioners subject to mandatory detention under 8 U.S.C. § 1225(b)(2) are such process only afforded by the INA.

To assess the merits of Petitioners' constitutional claims, it is necessary to determine first what due process rights Petitioners have. The INA *mandates* Petitioners' detention:

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

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

could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. Petitioners have not been admitted to the U.S., *see* FREX 1 ¶¶ 7, 23, 36, 49, and for any alien has "not been admitted into the country pursuant to law," the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added). 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*, 459 F. Supp. 3d 681.

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

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

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

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

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

* * *

To deny the Petition in this case, this Court need only follow the Supreme Court's pellucid 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.").

E. If the Court were to find that Petitioners are owed more due process than the INA provides, Petitioners' detention still does not violate the Due Process Clause.

The discussion above establishes, beyond reasonable dispute, that Petitioners' due process rights extend no further than what the INA provides. In the event this Court finds more process is due, Federal Respondents contend that such due process analysis favors Petitioners' continued detention. Thus, their claims that due process entitles them to something more must fail.

Petitioners begin their due process claim by claiming freedom from physical confinement is a fundamental right and thus merits strict scrutiny. *See* Pet. ¶ 104. 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 tis broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable to citizens," *Demore* held that Congress could "detain" an alien – without any procedure to determine on an "individual[ized] basis whether that alien was "dangerous" or a flight risk – during "his removal proceedings." *Id.* at 521-23; 525 (quoting *Mathews v. Diaz*, 423 U.S. 67, 79-80 (1976)). This was so, the Court continued, because "detention during deportation proceedings [w]as a constitutionally valid aspect of the deportation process." *Id.* at 523; *see also id.* at 531. And it was irrelevant that bond hearings could provide an individualized assessment of an alien's particular proclivity towards being a danger to the community and/or a flight risk without a significant burden, as Congress could employ "reasonable presumptions and generic rules" in dictating which aliens would be subject to mandatory detention because "the Due Process Clause does not require it to employ the least burdensome means

to accomplish its goal." *Id.* at 526 (quoting *Reno v. Flores*, 507 U.S. 292, 313 (1993)); 528. Put simply, as the Fourth Circuit has held, the *Demore* "Court refused to impose its own policy judgment on how best to ensure aliens' attendance at future removal proceedings." *Miranda*, 34 F.4th at 360.

Petitioners suggest that their placement in mandatory detention pursuant § 1225(b)(2)(A) runs afoul of due process. Such speculation about what "might" occur in the future, however, cannot vest Petitioners withstanding to seek habeas relief *now*. *See, e.g., Doe v. Hochul*, 139 F.4th 165, 187 (2d Cir. 2025). Nor is there any reason to believe that such a years-long process is likely here. And if Petitioners' concern comes to pass, and their removal proceedings become extended to a burdensome extent, that an alien subject to mandatory detention – under certain circumstances – may seek habeas relief in the form of a bond hearing. *See, e.g., Abreu*, 2025 WL 51475, at *7.

In any sense, the governing procedural due process framework confirms that Petitioners' detention satisfies an applicant for admission's due process. The Fourth Circuit analyzes an alien's due process claim by weighing the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Miranda*, 34 F.4th at 359-65. The three factors relevant to assessing Petitioners' 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. Federal Respondents recognize Petitioners' assertion that aliens have a liberty interest in freedom from physical restraint. *See* Pet. ¶ 108. But as applicants for admission, Petitioners have 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 even made clear that an alien who has not been admitted "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)).

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

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

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

2. Regarding the second factor, Petitioners have already received more process they are due because their 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. Petitioners, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A). And as Federal Respondents made clear *supra*, at 9-17, Petitioners are by law an applicants for admission "seeking admission [and] [are] not clearly and beyond a doubt entitled to be admitted[,]" and, thus subject to mandatory detention. 8 U.S.C. § 1225(b)(2)(A)

Petitioners claim their detention will be indefinite. *See* Dkt. 1-1, Civil Cover Sheet ("[h]abeas corpus action challenging unlawful *indefinite* detention by ICE") (emphasis added). As the Fourth Circuit makes clear, "[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 Petitioners may challenge only their *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 section 1225(b) are legitimate and significant. "[T]he government interest includes detention." *Miranda*, 34 F.4th at 364. A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). "Congress has repeatedly

shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda*, 34 F.4th at 364. And for one, Petitioners' argument that the Due Process Clause mandates immediate release flouts the Supreme Court's directive that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Diaz*, 426 U.S. at 81.

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 [U.S.] 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. Petitioners' 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 dismiss the instant Petition.

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

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

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

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 rather than the special rules" Petitioner seeks. 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 accordingly, several decisions from jurists of 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 grants the Petition, it should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations.[17]

II. Petitioner Cannot Seek APA Review in a Habeas Petition

In this proceeding, Petitioners expressly challenge their civil detention. *See, e.g.*, Pet. ¶ 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).[18]

In the Amended Petition, they also purport to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. *Id.* ¶¶ 99-101. This he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim"). That is because, as the Fourth Circuit recently held in the context of the Equal Access to Justice Act, a "habeas proceeding

[17] If the Court shifts the burden of proof to the government, at the very least, the Court should require only proof "to the satisfaction of the [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)).

[18] Also bearing mention in this respect is the fact that Petitioners appear to have paid only the $5 filing fee for a habeas petition rather than the $405 fee for a civil action, thus underscoring that the essence of this action is a habeas challenge. *See* Doc. No. 1; 28 U.S.C. § 1914(a); U.S. District Court for the Eastern District of Virginia, Court Fees, *available at* https://www.vaed.uscourts.gov/court-fees (last visited Oct. 10, 2025).

[i]s not a 'civil action'"; rather, such proceedings "are 'unique' and occupy a special place of their own in our system." *Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021) (quoting *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969)); *see Smith v. Angelone*, 111 F.3d 1126, 1130 (4th Cir. 1997) ("Although a habeas proceeding is considered a civil action for some purposes, it is 'more accurately regarded as being *sui generis*.'" (citation and internal citation omitted)). Petitioners may not have their cake and eat it too by availing themselves of the specialized procedural rules attendant to habeas proceedings while also maintaining a mine-run civil claim that, in the usual course, is subject to the Federal Rules of Civil Procedure.[19]

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline[20] to issue a Writ of Habeas Corpus and deny the Amended Petition.

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[19] The *raison d'être* for this peculiar mixing of habeas and civil claims may be the petition's notable request for attorney's fees under the APA, Pet., Prayer ¶ e, which appears to be an attempt to circumvent the Fourth Circuit's recent decision holding that such fees are not available in a habeas action under the Equal Access to Justice Act, *see Obando-Segura*, 999 F.3d at 191.

[20] Other jurists of this Court have previously enjoined Federal Respondents from rearresting an alien released on bond unless they commit a violation of law or fail to attend any court hearing. *See, e.g., Hasan*, Dkt. 16, Order. If the Court were to enjoin Federal Respondents from rearresting Petitioners, Federal Respondents respectfully request that they be allowed to rearrest Petitioners if they are ordered removed, which is required by law. *See* 8 U.S.C. § 1231(a)(2) ("[d]uring the removal period, the Attorney General *shall* detain the alien") (emphasis added).

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Respectfully submitted,

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