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

ERICK ENRIQUE GARCIA GUARDADO,

Petitioner,

v.

TODD M. LYONS, *et al.*,

Respondents.

Case No. 1:25cv1741 (MSN/WBP)

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

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INTRODUCTION

Petitioner challenges the legality and constitutionality of United States ("U.S.") Immigration and Customs Enforcement's ("ICE's") established civil detention authority. As "[a]n alien present in the [U.S.] who has not been admitted[,]" Petitioner is defined *by law* as an applicant for admission. 8 U.S.C. § 1225(a)(1). And, like here, when an applicant for admission "seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted" to the U.S., "[he] *shall* be detained[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, the Petition contends that discretionary detention under 8 U.S.C. § 1226(a) applies here instead, and that detention without a bond hearing violates the Immigration and Nationality Act ("INA"), related bond regulations, and the Due Process Clause.

This challenge fails. The INA clearly defines an "alien present in the [U.S.] who has not been admitted" as an "applicant for admission." And because Petitioner is present in the U.S., has not been admitted, is seeking admission, and 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 the Petition's constitutional claim, the due process afforded to applicants for admission is only that which is provided by the INA. And since no additional process is due here, there is no due process violation. Federal Respondents therefore respectfully request that this Court deny the Petition.[1]

Federal Respondents recognize that this Court and other jurists of this Court have recently rejected Federal Respondents' arguments on the issues presented below. *See, e.g.*, *Singh v. Lyons*, 1:25-cv-1606, Dkt. 6 (E.D. Va. Oct. 14, 2025) (Trenga, J.); *Quispe-Ardiles v. Noem*, 2025 WL

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

2783800 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va. 2025) (Brinkema, J.); *see also Teyim v. Perry*, 1:25-cv-1615, Dkt. 9 (E.D. Va. Oct. 15, 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); *Alfaro v. Lyons*, 1:25-cv-1569, Dkt. 11 (E.D. Va. Oct. 11, 2025) (Trenga, J.); *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, 2025) (same); *Vargas Nunez v. Lyons*, 1:25-cv-1574, Dkt. 10 (E.D. Va. Oct. 1, 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); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (same).

Federal Respondents respectfully remain of the view that their position is correct, and therefore present these arguments in order to preserve them for appeal (if ultimately authorized by the Solicitor General).

BACKGROUND

A. Statutory and Regulatory Background

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing 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). Key to this statutory scheme is the concept of "admission." An "admission" (or being "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 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 under § 1225(b)(2). *Hasan*, 2025 WL 2682255, at *5; *see Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) (Brinkema, J.); 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission). Section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission "*shall be detained* for a [removal] proceeding" if the "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).[2]

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 § 1225(b)(2) does not provide for

[2] This form of mandatory detention has the same effect as the mandatory civil immigration detention required for certain other classes of aliens pursuant to § 1226(c).

bond hearings, *see id.* at 297-303; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), the statute 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*, 583 U.S. 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 (emphasis added); *see id.* § 1101(a)(13)(B).

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

As the Supreme Court has explained, "[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 an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Pursuant to 8 U.S.C. § 1226(b), ICE "at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the alien under the original warrant, and detain the alien." *Id.*; *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

B. Petitioner's Immigration History

The details of Petitioner's immigration history are more fully explained in Federal Respondents' Exhibit ("FREX") 1, which is attached to this memorandum.

C. The Instant Petition

Petitioner filed a Petition for a Writ of Habeas Corpus on October 9, 2025. *See* Dkt. 1 ("Pet."). Petitioner brings three claims for relief. He claims that his mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) violates the INA and its implementing regulations (Counts One and Two). Pet. ¶¶ 55-61. Petitioner also claims that his detention without a bond hearing violates his due process rights (Count Three). *Id.* ¶¶ 62-65.[3]

ARGUMENT

A. Pursuant to 8 U.S.C. § 1225(b)(2)(A), detention is mandatory for applicants for admission seeking admission who are not clearly and beyond a doubt entitled to be admitted.

To analyze the Petition's claims, this Court first must determine the statutory basis for Petitioner's detention. As a *legal* matter, 8 U.S.C. § 1225(b)(2)(A) applies here, since it encompasses applicants for admission "seeking admission [and] [are] not clearly and beyond a doubt entitled to be admitted." *Id.*; *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (emphasis added); *but see, e.g.*, *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 country but 'has not been admitted,' is considered an 'applicant for admission' under 8 U.S.C. § 1225(a)(1)." *Hasan*, 2025 WL 2682255, at *9. "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Luna Quispe*, 2025 WL

[3] In his prayer for relief, Petitioner seeks attorneys' fees and costs pursuant to the Equal Access to Justice Act. Pet. at 13. This request is foreclosed by Fourth Circuit precedent. *See Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021).

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) "is not clearly and beyond doubt entitled to be admitted into the [U.S.]" *Luna Quispe*, 2025 WL 2783799, at *5 (quoting 8 U.S.C. § 1225(b)(2)(A)) (internal quotations omitted); *see also Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4 (D. Mass. 2025). Petitioner meets all three requirements and is thus properly detained under 8 U.S.C. § 1225(b)(2)(A).

i. Petitioner is statutorily defined as an "applicant for admission."

The factual circumstances of this case make clear that mandatory detention under 8 U.S.C. § 1225(b)(2) applies here because Petitioner is an applicant for admission for whom DHS did not elect to utilize expedited removal.[4] *See generally* FREX 1. 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

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

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 are 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 Petitioner has not been admitted to the U.S. *See* FREX 1. Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official, which does not satisfy the definition of "admission." *See* 8 U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). Thus, because Petitioner is an "alien *present* in the [U.S.] who has *not been admitted*[,]" he is, *by law*, an "applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2; *see also Leiba v. Holder*, 699 F.3d 346, 351 (4th Cir. 2012) (noting that courts cannot ignore the plain meaning of Congress' definition of "admitted").

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 do 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 reading 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*, 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*, 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).

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

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

In addition to being an applicant for admission, one jurist of this Court recently held 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 (emphasis added). 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). *See Vargas Gomez*, 2025 WL 2780351, at *9.

An alien is actively seeking admission into the U.S. simply by being in the U.S. without being admitted. *See Jennings*, 583 U.S. at 288 (holding aliens detained under § 1225(b)(2)(A) "'shall be detained for a removal proceeding' 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 ("[J]ust 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 alien.") (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 held 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 held that an alien cannot be physically present in the U.S. without being admitted to the U.S. *Id.* at 252; *see id.* ("in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]") (citing *Kaplan*, 267 U.S. at 229-30). And since Petitioner has pursued a life in the U.S., as a legal matter, he must be actively seeking admission before being physically present and residing in the U.S. *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-Lora*, 25 I. & N. Dec. 734, 743 (BIA 2012) (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 different facts are presented here, Petitioner, like the alien in *Jimenez-Rodriguez*, entered the U.S. without inspection. *See* FREX 1. The Fourth Circuit determined that the petitioner in *Jimenez-Rodriguez* was "seeking admission" because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. Therefore, it follows that "[b]ecause [Petitioner] was never lawfully admitted, he qualifies as someone seeking admission[.]" *Jimenez-Rodriguez*, 996 F.3d at 194 n.2 (internal quotations omitted) (emphasis added). And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A). *Vargas Gomez*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2; *see also* 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. The detention at issue here is pursuant to ICE's statutory obligations, which do not allow for release on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *Vargas Gomez*, 2025 WL 2780351, at *9; *Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2.

Federal Respondents' reading of § 1225(b)(2)(A) also does not render § 1226(c) superfluous. *See Vargas Gomez*, 2025 WL 2780351, at *9-10; *Chavez*, 2025 WL 2730228, at *5. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens, and is *not* limited to any subset. *See id.* ("[t]he Attorney General shall take into custody *any* alien") (emphasis added). Indeed, lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or 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 resident'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 an alien to be admissible in order to adjust from non-immigrant to lawful permanent resident status. The reality of admitted but inadmissible aliens is underlined by the existence of a waiver of inadmissibility for adjustment applications; such applications 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).

In the end, Petitioner is mistaken about the proper application of §§ 1225(b) and 1226(a) for several reasons. As a matter of statutory construction, § 1225(b)(2)(A) governs because it contains specific mandatory language, *see id.* ("the alien *shall* be detained") (emphasis added), as

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

Recently, jurists of this Court held that "Respondents' position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a)." *Luna Quispe*, 2025 WL 2783799, at *6; *see also, e.g.*, *Quispe-Ardiles*, 2025 WL 2783800, at *5. In analyzing the "default rule" as construed by *Jennings*, these jurists distinguish "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 respectfully, *Jennings* was limited to "***certain*** aliens already in the country," not *all* aliens already in the country. *Id.* at 289 (emphasis added); *see Vargas Gomez*, 2025 WL 2780351, at *9. And while Petitioner is an "alien already in the country[5]," he is also an "alien seeking admission into the country." *Jennings*, 583 U.S. at 289. Therefore, under the rules of statutory interpretation, Petitioner is detained pursuant to § 1225(b)(2)(A)'s *mandatory* framework, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s *discretionary*

[5] 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 aliens must be admitted to be deportable).

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 held 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).

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" versus "admission"). Once Congress enacted the IIRIRA, admission became "the key word." *Vartelas*, 566 U.S. at 262. Thus, reading additional language in *Leng May Ma* with the adoption of the term "admission" instead of "entry,"

the case states 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); *United States v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu v. United States*, 142 U.S. 651, 661 (1892)). Therefore, it seems it *was* Congress' intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Petitioner. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez*, 693 F.3d at 413 n.5.

In *Luna Quispe*, the Court implied, citing to *Jennings*, that only "arriving aliens" are 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 "applicant[s] for admission," and the statute *expressly* refers to this broader group. *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 recognized that mandatory detention under § 1225(b) applies 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 has made 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 *United States 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 held Federal Respondents' interpretation of § 1225(b)(2)(A) to be "at odds with DHS's own historic understanding of the statute's meaning." *Quispe-Ardiles*, 2025 WL 2783800, at *7; *see Hasan*, 2025 WL 2682255, at *9. But an agency's own past practice cannot overcome the plain meaning of the statute. *See Bracamontes v. Holder*, 675 F.3d 380, 384 (4th Cir. 2012) ("the plain meaning controls"); *see also VanDerStok v. Garland*, 86 F.4th 179, 190 (5th Cir. 2023) ("historical practice does not dictate the interpretation of unambiguous statutory terms") (internal citations and quotations omitted).

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

B. There is no due process violation here.

i. The Constitution Does Not Mandate Any Further Process to Petitioner than that Provided by Statute

To assess the merits of the Petition's constitutional claims, it is necessary to determine first the due process rights afforded to aliens in these circumstances. As explained above, the INA *mandates* the detention here. 8 U.S.C. § 1225(b)(2)(A). 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. 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 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added). 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.).

To be sure, *Thuraissigiam* only addressed the due process afforded to arriving aliens detained pursuant 8 U.S.C. § 1225(b)(1), and the Supreme Court has yet to address § 1225(b)(2). 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).

The Supreme Court held that the immigration officer's decision to prevent the petitioner from landing was made in accordance with the relevant 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. In *Jennings*, aliens alleged, notwithstanding other statutory detention provisions, that § 1225(b) provided for periodic bond hearings in which 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. 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 original). 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 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.").

ii. If the Court were to find that additional due process than the INA provides should be afforded, the detention here still does not violate the Due Process Clause.

The discussion above establishes, beyond reasonable dispute, that Petitioner's due process rights extend no further than what the INA provides. In the event this Court holds otherwise, a traditional due process analysis still favors continued detention. Thus, the Petition's claims that due process requires something more must fail.

As a threshold matter, "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[,]" notwithstanding any individual's countervailing right to freedom from physical confinement. *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," the Supreme Court in *Demore v. Kim* held that Congress could "detain" an alien – without any procedure to determine on an individualized basis whether that alien was "dangerous" or a flight risk – during "his removal proceedings." 538 U.S. 510, 521-23, 525 (2003) (quoting *Diaz*, 426 U.S. at 79-80; *Carlson v. Landon*, 342 U.S. 524 (1952)). 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 explained, 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.

To the extent that the Petition suggests that mandatory detention pursuant to § 1225(b)(2)(A) runs afoul of due process as it may be indefinite, this argument is a red herring. Speculation about what "might" occur in the future cannot vest a habeas petitioner with standing to seek habeas relief *now*. *See, e.g.*, *Doe v. Hochul*, 139 F.4th 165, 187 (2d Cir. 2025). 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 Petitioner 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). Nor is there any reason to believe that any kind of indefinite process is likely here. In the event of a lengthy mandatory detention, certain jurists of this Court have held that an alien subject to mandatory detention – under certain circumstances – may seek habeas relief in the form of a bond hearing.

In any case, the governing procedural due process framework confirms that Petitioner's detention satisfies an applicant for admission's due process rights. The three factors relevant to assessing Petitioner's due process claim are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Miranda*, 34 F.4th at 359-65.

a. Federal Respondents recognize that "[f]reedom from . . . government custody . . . 'lies at the heart of the liberty that [the Due Process] Clause protects.'" *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But as applicants for admission, Petitioner 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. United States*, 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.'" *United States 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*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."). Indeed, Petitioner's private liberty interest is diminished when his release is available on the condition that he leave the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999) (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"), *overruled on other grounds by INS v. St. Cyr*, 533 U.S. 289, 312-13 (2001).

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.

b. Regarding the second factor, individuals detained under § 1225(b)(2)(A) have the ability to seek parole for reasons beyond those 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. Petitioner, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

Therefore, the second *Mathews* factor favors the government.

c. 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 for one, the 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. Mandatory detention pursuant to § 1225(b)(2)(A) 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 dismiss the instant Petition.

C. 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.).

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 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 were to grant the Petition, the Court should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline to issue a Writ of Habeas Corpus and deny the Petition.[6]

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Respectfully submitted,

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[6] The Court has 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 Hasan*, Dkt. 16, Order. If the Court were to enjoin Federal Respondents from rearresting Petitioner, Federal Respondents respectfully request that they be allowed to rearrest Petitioner if he is 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).