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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

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| K.M.G.,<br><br>Petitioner,<br><br>v.<br><br>CHRISTOPHER J. LAROSE, et al.,<br><br>Respondents. | Case No. 25-cv-01356-DMS-VET<br><br>**RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**<br><br>Date: June 5, 2025<br>Time: 1:30 p.m.<br>Judge: Hon. Dana M. Sabraw |

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## I. INTRODUCTION

Petitioner requests that this Court order her release from Immigration and Customs Enforcement (ICE) custody, or order a bond hearing, or order Respondents to terminate her expedited removal proceedings. However, as Petitioner's claims are direct and indirect challenges to the commencement of her expedited removal proceedings, jurisdiction over her claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g). Moreover, as Petitioner has already admitted that she is inadmissible, her claims are baseless. Accordingly, Respondents respectfully request that the Court deny Petitioner's requests for relief.

## II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Somalia. ECF No. 1 at ¶ 17. On April 3, 2024, Petitioner entered the United States, between ports of entry, at or near Tecate, California. ECF No. 1 at ¶ 21. She was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear (NTA). ECF No. 1 at ¶ 22. The Department of Homeland Security (DHS) alleged Petitioner: (1) is not a citizen or national of the United States; (2) is a native and citizen of Somalia; (3) arrived in the United States at or near Tecate, California, on or about April 3, 2024; and (4) was not then admitted or paroled into the United States. Exhibit 1 (NTA).[1] Based on the allegations, Petitioner was charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. *See id.*; ECF No. 1 at ¶ 22.

Petitioner's initial hearing before an immigration judge was set to occur at the Immigration Court in Atlanta, Georgia. ECF No. 1 at ¶ 22. On July 1, 2024, Petitioner filed written pleadings, wherein she admitted to all of the allegations set out in the NTA—including that she was not admitted or paroled into the United States—and conceded the charge of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). Exhibit 2.

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

In July 2024, an immigration judge granted Petitioner's motion to change venue to the Immigration Court in Fort Snelling, Minnesota. ECF No. 1 at ¶ 25. On February 20, 2025, Petitioner was apprehended by ICE. ECF No. 1 at ¶ 28. On February 21, 2025, Petitioner was charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. Exhibit 3. She was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). That same day she was also charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and issued a Notice and Order of Expedited Removal under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1). Exhibit 4.

On March 6, 2025, DHS moved to terminate Petitioner's removal proceedings under 8 U.S.C. § 1229a. ECF No. 1 at ¶ 29. Over Petitioner's objections, the immigration judge granted DHS's motion and determined dismissal was proper. ECF No. 1 at ¶¶ 29–31. On March 12, 2025, Petitioner was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), and charged with removability under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. Exhibit 5. On March 14, 2025, Petitioner appealed the immigration judge's order to the Board of Immigration Appeals. ECF No. 1 at ¶ 33.

## III. ARGUMENT

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1). Petitioner's arguments center around two main assertions: (1) that she is not subject to inadmissibility under 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7); and (2) that she is not subject to 8 U.S.C. § 1225(b)(1). *See* ECF No. 1 at ¶¶ 38–41. As an initial matter, the Court lacks jurisdiction over these claims pursuant to 8 U.S.C. §§ 1252(a)(2)(A), 1252(e), and 1252(g). However, even assuming jurisdiction, Petitioner has already conceded to inadmissibility. *See* Exhibit 2 (Written Pleadings).[2] Petitioner has also admitted to

[2] Specifically, Petitioner conceded inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i),

unlawfully entering the United States on or about April 3, 2024, without a proper travel document and without then being admitted or paroled. Exhibit 2. As such, Petitioner is properly subject to expedited removal under 8 U.S.C. § 1225(b)(1).

**A. The Court Lacks Jurisdiction Over Petitioner's Claims**

The Court should dismiss this action because Petitioner has not satisfied her burden of establishing that the Court has jurisdiction to hear her claims. *See Finley v. United States*, 490 U.S. 545, 547–48 (1989); *Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). Petitioner brings her habeas action under 28 U.S.C. § 2241, but jurisdiction over her claims is barred pursuant to 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (except as explicitly provided in 8 U.S.C. § 1252, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, adjudicate cases, or execute removal orders against any alien[.]") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction"). Petitioner's claims are based on the decision to commence expedited removal proceedings against her. However, § 1252(g) removes a court's "jurisdiction

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and then admitted to factual allegations that also support a charge of inadmissibility under 8 U.S.C. § 1182(a)(7).

over 'decision[s] . . . to commence proceedings'" and "include[s] not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding." *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (emphasis in original) (quoting *Richards-Diaz v. Fasano*, 233 F.3d 1160, 1165 (9th Cir. 2000) ("We are in no position to review the timing of the Attorney General's decision to 'commence proceedings' against petitioner."), *vacated on other grounds by* 533 U.S. 945 (2001)).

Moreover, "[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling provision, which bars review of almost 'every aspect of the expedited removal process.'" *Azimov v. U.S. Dep't of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-stripping provisions "cover[] the 'procedures and policies' that have been adopted to 'implement' the expedited removal process; the decision to 'invoke' that process in a particular case; the 'application' of that process to a particular alien; and the 'implementation' and 'operation' of any expedited removal order." *Mendoza-Linares*, 51 F.4th at 1155. "Congress chose to strictly cabin this court's jurisdiction to review expedited removal orders." *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (finding that the Supreme Court abrogated any "colorable constitutional claims" exception to the limits placed by § 1252(a)(2)(A)); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause). "Congress has chosen to explicitly bar nearly all judicial review of expedited removal orders concerning such aliens, including 'review of constitutional claims or questions of law.'" *Mendoza-Linares*, 51 F.4th at 1148 (quoting 8 U.S.C. § 1252(a)(2)(A), (D)); *see also Thuraissigiam*, 591 U.S. at 138–39 (2020) (explicitly rejecting Ninth Circuit's holding that an arriving alien has a "constitutional right to expedited removal proceedings that conform to the dictates of due process").

"Congress could scarcely have been more comprehensive in its articulation of the general prohibition on judicial review of expedited removal orders." *Mendoza-Linares*, 51 F.4th at 1155. Specifically, section 1252(a)(2)(A) states:

> (2) Matters not subject to judicial review
>
> (A) Review relating to section 1225(b)(1)
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review–
>
> (i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,
>
> (ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,
>
> (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or
>
> (iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

8 U.S.C. § 1252(a)(2)(A).

Thus, "[s]ection 1252(a)(2)(A)(i) deprives courts of jurisdiction to hear a 'cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1),' which plainly includes [Petitioner's] collateral attacks on the validity of the expedited removal orders." *Azimov*, 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031–35 (9th Cir. 2016) (concluding that the "arising from" language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the provisions by which the expedited removal order was entered against Petitioner, she necessarily asks the Court "to do what the statute forbids [it] to do, which is to review 'the application of such section to [her].'" *Mendoza-Linares*, 51 F.4th at 1155 (quoting 8 U.S.C. § 1252(a)(2)(A)(iii). Most notably, a determination made concerning inadmissibility "is not subject to judicial review." *Gomez-Cantillano v. Garland*, No. 19-72682, 2021

WL 5882034, at *1 (9th Cir. Dec. 13, 2021) (citing 8 U.S.C § 1252(a)(2)(A)(iii)).

In setting forth provisions for judicial review of § 1225(b)(1) expedited removal orders, Congress expressly limited available relief: "Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may" "enter declaratory, injunctive, other equitable relief in any action pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review concerning expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge to the validity of the system "is available [only] in an action in the United States District Court for the District of Columbia[.]" 8 U.S.C. § 1252(e)(3).

Narrow habeas corpus proceedings are expressly "limited to determinations" of three questions: (1) "whether the petitioner is an alien"; (2) "whether the petitioner was ordered removed under [section 1225(b)(1)]"; and (3) "whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien" who has been granted status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)–(C). "In determining whether an alien has been ordered removed under section 235(b)(1) [8 U.S.C. § 1225(b)(1)], the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be *no review of whether the alien is actually inadmissible* or entitled to any relief from removal." 8 U.S.C. § 1252(e)(5) (emphasis added). Petitioner's primary request within her petition is to have this Court review DHS's determination of her inadmissibility. However, "a habeas court lacks jurisdiction to review 'whether the alien [1] is actually inadmissible or [2] entitled to any relief from removal.'" *Mendoza-Linares*, 51 F.4th at 1158 (quoting 8 U.S.C. § 1252(e)(5)).

None of the three narrow avenues for habeas relief apply here. Petitioner concedes that she is an alien. *See* ECF No. 1 at ¶¶ 6, 17–21. Petitioner does not assert

that she has been granted any form of status. Moreover, "[t]here is no doubt that an order 'under section 235(b)(1)' was in fact issued here, because (1) the order[s] that [are] in the record and that [Petitioner] challenge[] expressly state[] that [they] w[ere] entered 'under section 235(b)(1)' of the INA." *Mendoza-Linares*, 51 F.4th at 1158; *see* ECF No. 1 at ¶¶ 2–4, 38. Each of Petitioner's claims fall outside the limited habeas corpus authority provided within § 1252(e)(2).

Thus, as Petitioner's claims are direct and indirect challenges to her § 1225(b)(1) expedited removal order and the application of the expedited removal process to Petitioner, this Court lacks jurisdiction under 8 U.S.C. § 1252. The petition should therefore be denied, and this action should be dismissed.

**B. Petitioner's Statutory Claim Fails on the Merits**

Even assuming the Court has jurisdiction over her petition, Petitioner has not stated a statutory violation. Petitioner contends that Respondents lacks statutory authority to detain her under 8 U.S.C. § 1225(b)(1), which provides, in part,

> If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

8 U.S.C. § 1225(b)(1)(A)(i).

Petitioner claims that because she does not meet these criteria, her detention must be governed by 8 U.S.C. § 1226(a). ECF No. 1 at ¶ 50. But Petitioner has already conceded that she is subject to § 1225(b)(1). Exhibit 2. She has admitted to unlawfully entering the United States on or about April 3, 2024, without a proper travel document and without then being admitted or paroled, and she has conceded to inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). Exhibit 2. As Petitioner entered the United States less than two years ago without a proper travel document, and without then being

admitted or paroled, she is subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii).

Accordingly, Petitioner's statutory violation claims fail.

**C. Petitioner's Due Process Claim Fails on the Merits**

Even assuming the Court has jurisdiction over her petition, Petitioner's Fifth Amendment due process claim fails. Petitioner contends that her "continued detention without any bond hearing violates her due process rights under the Fifth Amendment." ECF No. 1 at ¶ 55. But the only due process rights she has are those rights statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.") (citations omitted); *see generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing.").

Title 8 U.S.C. § 1225(b)(1) sets forth expedited removal proceedings for a subset of individuals who are inadmissible arriving noncitizens, like Petitioner. Exhibit 2. A noncitizen who is subject to 8 U.S.C. § 1225(b)(1) proceedings is ordered removed "without further hearing or review," unless he or she indicates an intent to apply for asylum or a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i). If an asylum officer "determines that a[] [noncitizen] does not have a credible fear of persecution, the officer shall order the [noncitizen] removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). A noncitizen may, however, seek review of an asylum officer's negative credible fear determination before an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). "Any alien subject to the procedures under [8 U.S.C. § 1225(b)(1)(B)(iii)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until

removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

In *Jennings v. Rodriguez*, 583 U.S. 281, 296–303 (2018), the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that "[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. The Supreme Court noted that neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Supreme Court added that the sole means of release for noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis in original). The Supreme Court concluded: "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

Here, Petitioner claims that, despite the statutory prohibition on such relief, the Fifth Amendment's Due Process Clause requires that she be afforded a bond hearing. ECF No. 1 at ¶ 56. Petitioner's due process claim, however, is foreclosed by the same statutory constraints discussed above.

In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged detention without a hearing violated his constitutional rights and he sought a bond hearing for relief. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any constitutional right, stating: "[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation omitted).

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In *Thuraissigiam*, the Supreme Court once again addressed the due process rights of individuals like Petitioner, inadmissible arriving noncitizens seeking initial entry into the United States. 591 U.S. at 138–40. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon*, 459 U.S. at 32).

Since the Supreme Court's decision in *Thuraissigiam*, numerous published decisions have been issued acknowledging *Thuraissigiam*'s impact on the precise Fifth Amendment Due Process Clause issue raised in this petition: Does a noncitizen detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being detained for a certain period of time? The answer is no. *See Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

The Ninth Circuit has discussed the ramifications of *Thuraissigiam* and stated: "[I]n the expedited removal context, a petitioner's due process rights are coextensive with the statutory rights Congress provides." *Guerrier*, 18 F.4th at 310; *see also Mendoza-Linares*, 51 F.4th at 1149 ("Because Congress has clearly and unambiguously precluded us from asserting jurisdiction over the merits of individual expedited removal orders, even with regard to constitutional challenges to such orders, and because that prohibition on jurisdiction raises no constitutional difficulty, we conclude that we lack jurisdiction over Mendoza-Linares's petition."); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) ("Congress has already balanced the

amount of due process available to petitioners with the executive's prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress."); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings. The only due process due an alien seeking admission to the United States is 'those rights regarding admission that Congress has provided by statute.'" (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing."). Other Circuit Courts have agreed. *See Tazu v. Attorney Gen. United States*, 975 F.3d 292, 300 (3d Cir. 2020) ("Tazu's constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into 'the cabin of a plane bound for [Bangladesh].'"); *Martinez v. LaRose*, 980 F.3d 551, 552 (6th Cir. 2020) ("When an alien attempts to cross our border illegally, the Due Process Clause does not require the government to release him into the United States. Instead, the government may detain him while it arranges for his return home.").

Simply put, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) which provides, absent discretionary parole, that she "be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." As the statutory authority she is detained under does not afford her a right to a determination by this Court as to whether her release is warranted nor a right to a bond hearing before an immigration judge, the Court should reject her claim that her detention violates the Fifth Amendment's Due Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

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Finally, to the extent Petitioner contends she is not seeking admission because her detention occurred when she was apprehended in February 2025 and not when she was apprehended in April 2024, the argument fails. In *Mezei*, the Supreme Court "established what is known as the 'entry fiction,' which provides that although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country." *Barrera–Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (internal citations and quotations omitted). The Supreme Court has explained that "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 692–93 (2001) (citing *Kaplan v. Tod*, 267 U.S. 228, 230 (1925)) (despite nine years' presence in the United States, an "excluded" alien "was still in theory of law at the boundary line and had gained no foothold in the United States"); *Leng May Ma v. Barber*, 357 U.S. 185, 188–90 (1958) (alien "paroled" into the United States had not effected an "entry")); *see also Correa v. Thornburgh*, 901 F.2d 1166, 1169 n.3 (2d Cir. 1990) ("An alien paroled into the United States has not 'entered' the United States for immigration purposes."). Under the entry fiction, "aliens who have been denied admission to the United States yet are present within its borders are 'treated, for constitutional purposes, as if stopped at the border.'" *Traore v. Ahrendt*, No. 18-CV-794 (JMF), 2018 WL 2041710, at *1 n.2 (S.D.N.Y. Apr. 30, 2018) (quoting *Zadvydas*, 533 U.S. at 693). "That rule rests on fundamental propositions: '[T]he power to admit or exclude aliens is a sovereign prerogative,' [*Landon*, 459 U.S. at 32]; the Constitution gives 'the political department of the government' plenary authority to decide which aliens to admit, *Nishimura Ekiu*, 142 U.S. at 659 []; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted, *see Knauff*, 338 U.S. at 544 []." *Thuraissigiam*, 591 U.S. at 139. Pursuant to the so-called "entry fiction," Petitioner is deemed, for constitutional purposes, as if

she was stopped at the border when she was apprehended on February 20, 2025.

## IV. CONCLUSION

For the reasons stated above, the Court should deny the petition.

DATED: June 2, 2025

Respectfully submitted,

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