UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

YULIETH GOMEZ MEJIA — PETITIONER

v. — NO. 4:25-CV-82-RGJ

KRISTI NOEM, in her Official Capacity as Secretary, Department of Homeland Security; TODD LYONS, in his Official Capacity as Acting Director, U.S. Immigration and Customs Enforcement; PAM BONDI, in her Official Capacity as Attorney General of the United States; and JASON WOOSLEY, in his Official Capacity as Grayson County Jailer — RESPONDENTS

RESPONDENTS' OPPOSITION TO PETITIONER'S HABEAS PETITION AND RESPONSE TO PETITIONER'S POST-HEARING BRIEF

Respondents, Kristi Noem, in her official capacity as Secretary for the Department of Homeland Security, and Todd Lyons, in his official capacity as Acting Director for U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as Attorney General of the United States file the current brief pursuant to the Court's September 25, 2025 order, [Doc. 23] and in response to Petitioner's post-hearing brief [Doc. 27]. Petitioner has been lawfully detained since July 2025 under 8 U.S.C. § 1225. Petitioner's asylum claim is being adjudicated, and detention is permitted until that adjudication is complete. Petitioner's habeas petition should be denied.

FACTUAL BACKGROUND

A Border Patrol Agent apprehended Petitioner, a citizen of Colombia, shortly after she unlawfully entered the country in December 2022. [Doc. 13-1, PageID#152;

Doc. 24, PageID#223-24, 239; *see also* **Exhibit 1**, DO DeJesus Declaration, ¶ 8 (noting that the I-213 was prepared in December 2022 and then reviewed and signed by a supervisory official in June 2023).] Petitioner was detained near San Diego, California. [*See id.*] "The Border Patrol Agent determined [Petitioner] had unlawfully entered the United States from Mexico on December 11, 2022, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States." [*Id.*] The Border Patrol Agent determined and recorded that Petitioner and her daughter "were undocumented non-citizens who illegally entered the United States." [*Id.*] Because of Petitioner's unlawful presence, she was arrested and transported for processing. [*Id.*] The Form I-213, Record of Deportable/Inadmissible Alien, explained Petitioner's immigration violation: (1) she lacked "the necessary legal documents to enter, pass through or remain in the United States"; and (2) she illegally crossed the United States into the country "without being inspected by an immigration officer at a designated port of entry." [*Id.*, at PageID#152-53.] Because Petitioner was present in the United States without being admitted or paroled, she was in violation of 8 U.S.C. § 1182(a)(6)(i). And because Petitioner lacked any valid document permitting her entry into the United States, she was in violation of 8 U.S.C. § 1182(a)(7)(A)(i).

Petitioner was identified as the head of household with custody of a minor child, and because of claimed detention capacity issues, Petitioner was granted parole under 8 U.S.C. § 1182(d)(5) on December 13, 2022. [Doc. 10, PageID#53.] Petitioner was informed that her parole expired on February 11, 2023. [*Id.*] Shortly after Petitioner's parole expired in February 2023, Petitioner testified that she presented to an

Indianapolis ICE office and thereafter corresponded with ICE to schedule an appointment to report to that office on July 28, 2025. [*Id.* at PageID#56; Doc. 24, PageID#226-27.] Thereafter, on or about July 31, 2023, Petitioner submitted an Application for Asylum and for Withholding of Removal. [Doc. 1, PageID#1.] Petitioner obtained a work authorization because she filed for asylum and her claim was pending for more than 180 days, but that has no relevance to the issue of Petitioner's removal or detention. *See* Asylum, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum (last accessed Oct. 3, 2025).

On July 28, 2025, Petitioner reported to ERO's Indianapolis office. [Doc. 6-2, PageID#31.] During the encounter, Petitioner stated that her minor "daughter is currently residing in New York with her Biological Father." [*Id.* at PageID#32.][1] Petitioner contests the details related to her minor daughter's status in New York, but there is no question that the minor daughter was not with Petitioner when she was detained nor was she under Petitioner's immediate care. [*See* Doc. 10, PageID#40 (Petitioner stated, "[s]he was asked if there was a minor child. She said 'no.'")] Petitioner was then taken into custody and provided a Form I-860 Notice and Order of Expedited Removal. [Doc. 6-2, PageID#27.] She was also offered the opportunity by an ICE deportation officer who spoke Spanish to her to provide statements about her

1 Mejia confirmed in her testimony before the Court that at the time of her detention, her daughter was with her daughter's biological father in New York City. [Doc. 24, PageID#246.] Petitioner testified that her daughter was finishing a vacation with the father and her daughter's aunt. *Id.*

admission to the United States, and she declined until she had a lawyer present. [Doc. 13-4, PageID#159-61.][2]

Petitioner is detained at the Grayson County Detention Center. She initiated the current action on July 31, 2025. [Doc. 1]. Respondents previously contended that Petitioner was served with a Notice to Appear (NTA) on August 22, 2025, [Doc. 13-3, PageID#156-58] which Petitioner disputed. After Petitioner's testimony, Respondents sought additional confirmation regarding service of the August 22 NTA, and as of the time of this filing, ICE has been unable to confirm details related to service of the NTA on Petitioner.[3] [**Ex. 1, ¶** 18.] However, that fact is irrelevant to the question of whether detention is proper because Petitioner was issued a Notice to Appear (NTA) before an immigration judge on September 10, 2025. That fact is undisputed. [Doc. 22-2, PageID#200-02.] The September NTA moved Petitioner out of the expedited removal process—under which she was properly detained—and will allow her to present her

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2 At the hearing, Petitioner denied she was asked questions by ICE representatives in July 2025 but confirmed that much of the information in the ICE documentation presented to the Court was nevertheless accurate, including the recordation that she refused to sign paperwork without the presence of an attorney. [Doc. 24, PageID#245-47.]

3 On August 23, 2025, the undersigned was informed that an NTA was served upon Petitioner in person on August 22, 2025, scheduling a hearing before an immigration judge on September 9, 2025. On September 10, 2025, the undersigned learned that the scheduled hearing before the immigration judge did not happen because the NTA was not properly filed with the immigration court. [**Ex. 1, ¶** 18.] Petitioner was then served with a new NTA, and the new NTA was properly filed with Immigration Court. [Doc. 22-2, PageID#200-02.] The undersigned learned there may be a contest to service of the August NTA in briefing by Petitioner, which was clarified during her testimony at the evidentiary hearing. As noted in the attached declaration, after investigation, it is not clear whether Mejia was served with the August 22 NTA. [**Ex. 1, ¶** 18.] But for the purposes of deciding whether Petitioner's detention is lawful, this fact is irrelevant.

asylum claim directly to an immigration judge—during which time her detention is lawful. Petitioner had hearings before the immigration judge on September 23 and September 30.[4] At the September 23 hearing, the immigration judge denied Petitioner's bond motion because the court found it lacked jurisdiction. **[Ex. 1,** ¶ 22.] That is because Petitioner is detained under 8 U.S.C. § 1225, *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025), not 8 U.S.C. § 1226. Petitioner conceded that she can appeal that decision to the Board of Immigration Appeals. [Doc. 27, PageID#270.]

Petitioner has another hearing scheduled with the immigration judge on October 14, before which Petitioner's I-589, Application for Asylum and for Withholding of Removal must be filed with the immigration judge. [*See* **Exhibit 2**, Petitioner's Automated Case Information.]

LEGAL BACKGROUND

I. Removal

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"),[5] replacing much of the INA with a new and

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[4] Mejia claims that from July 28, 2025, to September 10, 2025, she never saw or spoke to any official from ICE to explain her case or why she had been detained, yet she also claims that on two occasions, the first being about two weeks after her detention, an ICE agent attempted to conduct a credible fear interview with her via video link in response to her application for asylum. [Doc. 27, PageID#268; *see also* Doc. 24, PageID#233, 247.] She seems to contend that a credible fear interview conducted a few weeks after detention was somehow inappropriate, but she offers no statutory or regulatory authority for that proposition. [Doc. 27, PageID#279-81.]

[5] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens

"comprehensive scheme for determining the classification of . . . aliens," *Camins v. Gonzales*, 500 F.3d 872, 879 (9th Cir. 2007), including expedited removal. Prior to the IIRIRA, federal law "'established two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.'" *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Under this setup, "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Congress passed the "IIRIRA [to] address[] this anomaly by," eliminating the concept of "entry" and exclusion and deportation proceedings, while creating instead a uniform "removal" procedure. *Id.* Removability now turns on whether a foreign national is admissible or has been "admitted" at a port of entry. Foreign nationals arriving in the United States or present in the United States without having been admitted are now "applicants for admission." 8 U.S.C. § 1225(a)(1).

The IIRIRA preserved some elements of the former distinction between exclusion and deportation, including through the statutory enactment of expedited removal proceedings, which ensures that the Executive Branch can "expedite removal of aliens

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under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

lacking a legal basis to remain in the United States," *Kucana v. Holder*, 558 U.S. 233, 249 (2010). Two groups of noncitizens are subject to expedited removal: (1) those arriving in the United States, and (2) those designated by the Secretary of Homeland Security within certain outer statutory limits, which are related to the location at which a noncitizen was detained and the length of time in which they have been in the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii); *see also United States v. Guzman*, 2019 WL 3220576, 2019 U.S. Dist. LEXIS 118971, at *7 (W.D. Va. July 17, 2019). Thus, noncitizens in either the first group or second group can be removed through expedited removal if they are removable on either of two grounds of inadmissibility, namely, on the basis of fraud, 8 U.S.C. § 1182(a)(6)(C), or a lack of necessary documents permitting entry to the United States, 8 U.S.C § 1182(a)(7). 8 U.S.C. § 1225(b)(1)(A)(i).

The United States is not required to place applicants for admission into expedited removal proceedings. An applicant for admission subject to expedited removal can be placed directly in full removal proceedings, or an applicant can first be placed in expedited removal proceedings and then moved to full proceedings. "DHS has discretion to put aliens in section 240 [8 U.S.C. § 1229a] removal proceedings even though they may also be subject to expedited removal." *Matter of E-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011); *Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019).

An applicant for admission who claims credible fear of persecution has her claim heard by an asylum officer if she is in expedited removal proceedings. *Matter of M-S-*, 27 I&N Dec. 509, 511-12 (A.G. 2019). A noncitizen found by an asylum officer to have a credible fear of persecution under 8 U.S.C. §§ 1225(b)(1)(A)(ii) & (B) receives a full-

blown 8 U.S.C. § 1229a asylum hearing before an immigration judge and has a right to review by the Board of Immigration Appeals, and then the appropriate circuit court of appeals. *See DHS v. Thuraissigiam*, 591 U.S. 103, 110 (2020) ("If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing." (quoting 8 C.F.R. § 208.30(f) and further citing 8 U.S.C. § 1225(b)(1)(B)(ii))); *see also* 8 C.F.R. § 208.30(f) ("If an alien . . . is found to have a credible fear of persecution or torture, the asylum officer will . . . issue a Form I-862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings" under section 1229a of Title 8 of the United States Code). An applicant who receives a negative credible-fear determination may also seek review by an immigration judge, but if that judge affirms the negative finding, then "the asylum officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III); see also 8 C.F.R. § 1208.30(g).[6] Either type of applicant for admission is subject to detention under 8 U.S.C. § 1225 until the adjudication of the asylum application is complete. The only method for obtaining release is DHS granting discretionary parole under 8 U.S.C. § 1182(d)(5)(A). *See also Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

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6 Here, Petitioner bypassed the credible fear interview as if she was determined to have credible fear, was issued an I-862, and was placed directly into the process that will lead to an asylum hearing before an immigration judge. That hearing will permit her to be represented by counsel and will provide her with the potential for review by the Board of Immigration Appeals, and then the appropriate circuit court of appeals, should the determination be adverse to her position and she pursues review.

Judicial review of expedited removal orders is limited by 8 U.S.C. § 1252(a)(2)(A). That statute provides that the Court does not have jurisdiction to review the expedited removal order issued to Petitioner except as provided in subsection (e) of § 1252. Subsection (e) "permits review through habeas corpus proceedings, but that is limited to determinations of—(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under § 1225(b), and (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence . . . or has been granted asylum . . . ." *Zamirov v. Olson*, 2025 WL 2618030, 2025 U.S. Dist. LEXIS 179540, at *4-5 (Aug. 29, 2025 N.D. Ill.) (quoting 8 U.S.C. § 1252(e)(2)(A)-(C)). Judicial review is not permitted if the question presented "is whether the expedited removal order is *lawfully applied*," or if expedited removal proceedings should have been initiated. *Id.* at *6.

II. Detention under 8 U.S.C. § 1225.

As noted above, 8 U.S.C. § 1225 is applicable to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Section 1225(b)(1) applies to arriving aliens and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These noncitizens are generally

subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the individual "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An individual "with a credible fear of persecution" is "detained for further consideration of the application for asylum." Id. § 1225(b)(1)(B)(ii).[7]

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)," *id.*, including noncitizens who are in full removal proceedings under 8 U.S.C. § 1229a, *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025). Under § 1225(b)(2)(A), an individual "who is an applicant for admission" shall be detained until her removal proceeding is complete. *See also Jennings*, 583 U.S. at 299.

III. Detention under 8 U.S.C. § 1226(a).

8 U.S.C. § 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. Under 8 U.S.C. § 1226(a), ICE may obtain a warrant to arrest and detain a noncitizen to pursue administrative removal proceedings against them. 8 U.S.C. § 1226(a). Noncitizens detained under 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they fall into an exception, such as the exceptions described in § 1226(c). *See id.* 8 U.S.C. § 1225(b), in contrast, applies to noncitizens who are "applicants for admission," – a subset of noncitizens that explicitly includes those "present in the

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7 Petitioner admits that § 1225 expedited removal procedures require mandatory detention for noncitizens seeking asylum. [Doc. 27, PageID#272-73.] She also admits that removal pursuant to § 1225's catchall provision also mandates detention for noncitizens who are not paroled. [*Id.*, PageID#275.]

United States who ha[ve] not been admitted." *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). In *Matter of Lemus*, the BIA explained that "Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ." 25 I. & N. Dec. 734, 743 (BIA 2012).

Supreme Court precedents indicate that noncitizens who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–40. While noncitizens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a noncitizen who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that noncitizens who have "entered the country clandestinely" are entitled to such additional rights. *Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has instead codified this distinction by treating all noncitizens who have not been admitted—including unlawful entrants who evade detection for years—as "applicants for admission." 8 U.S.C. § 1225(a)(1). In line with these cases and the statute, Congress

created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and noncitizens who have been admitted to the country are detained under § 1226.

IV. Parole

The Executive Branch has discretion under 8 U.S.C. § 1182(d)(5)(A) to release into the United States applicants for admission instead of holding them in detention. Parole may be granted "under such conditions as [the DHS Secretary] may prescribe" and "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* Parole "shall not be regarded as an admission of the alien." *Id.* A grant of parole terminates automatically "at the expiration of the time for which parole was authorized." 8 C.F.R. § 212.5(e)(1). When parole is terminated, the previously paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). *see also* 8 C.F.R. § 212.5(e)(2)(i) (providing that when parole granted to an alien is terminated "he or she shall be restored to the status that he or she had at the time of parole"); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"); *Zamirov*, 2025 U.S. Dist. LEXIS 179540, at *7-8; *Rodriguez v. Bondi*, 2025 WL 2490670, 2025 U.S. Dist. LEXIS 172450, at *5-7 (E.D. Va. June 24, 2025) (citing other sources). "Parole is a pseudo-reality that . . . the United States uses that allows non-citizens to physically remain in the in-land United States but are 'treated' for purposes of the legal process as if 'stopped at the border.'" *Barrera v. Tindall*, 2025 WL

2690565, 2025 U.S. Dist. LEXIS 184356, at *12 (W.D. Ky. Sept. 19, 2025) (citing *Dep't of Homeland Sec. v. Thurasissigiam*, 591 U.S. 103, 139 (2020). Parole under 8 U.S.C. § 1182(d)(5)—which is the parole provision Petitioner was released under—is the applicable parole provision for noncitizens detained under 8 U.S.C. § 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

ARGUMENT

Petitioner bears the burden to show that her detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). She has not met her burden.

I. Petitioner is an Applicant for Admission who is Seeking Asylum, so she is Subject to Detention Under 8 U.S.C. § 1225(b).

Petitioner is an applicant for admission. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States whether or not at a designated port of arrival." *Matter of Q. Li*, 29 I. & N. Dec. at 68 (quoting 8 U.S.C. § 1225(a)(1)). Petitioner, who entered the country without any authorization and was apprehended at or near the border and immediately determined to be inadmissible, [Doc. 13-1, PageID#152] is treated as an applicant for admission under § 1225. *Thuraissigiam*, 591 U.S. 103, 140. The parole provided to Petitioner under 8 U.S.C. § 1182(d)(5) confirms her status as an applicant for admission under 8 U.S.C. § 1225. *Iredia v. U.S. Att'y Gen.*, 25 F.4th 193, 196 (3rd Cir. 2022). The fact that Petitioner worked and lived in the United States for over two years did not change her status as an "applicant for admission" deemed inadmissible upon arrival. "An alien present in the United

States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6); *see also id.*, § 1182(a)(7). Mejia's arrival in the United States at a time and place other than designated by the Attorney General made her inadmissible and an "applicant for admission." Further, at the September 30 hearing before the immigration judge, Petitioner conceded she was removable under § 1182(a)(7)(A)(i)(I), and the immigration judge found she was also inadmissible under § 1182(a)(6)(A)(i). [**Ex. 1**, ¶ 23.] "Title 8 U.S.C. § 1225(b)(1) applies to aliens determined to be inadmissible due to lack of valid documentation under 8 U.S.C. § 1182(a)(7)." *Contreras v. Oddo*, 2025 WL 2104428, 2025 U.S. Dist. LEXIS 144127, at *10 (W.D. Penn. July 28, 2025).[8] Petitioner's citation to *Reyes v. Raycraft*, 2025 U.S. Dist. LEXIS 175767 (E.D. Mich. Sept. 9, 2025), does not support her argument. Reyes was not apprehended at the border and determined to be inadmissible and paroled under 8 U.SC. U.S.C. § 1182, as Petitioner was. *Id.* at *4. He was apprehended in the interior of the country around 20 years after entry, and he was detained under an I-200 Warrant for Arrest.

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8 Petitioner concludes that the term "applicant for admission" is limited by time and geography, only applicable to her when she was caught at the border attempting to enter illegally. [Doc. 27, PageID#284.] As demonstrated herein, however, the law provides that Petitioner's status as an applicant for admission has not changed since she crossed the border unlawfully and was apprehended and declared inadmissible. Neither her parole nor her post-parole activities in the United States provided her with the foundation for any lawful status. She was and is an applicant for admission. Petitioner mistakenly claims that FN 2 of *Thuraissigiam*, 591 U.S. 103, supports her contention. It does not. The cited footnote only demonstrated a change in definition, but did not address the claim that a noncitizen can only be an applicant for admission when at a certain point in time and geography.

DHS is authorized to place applicants for admission in expedited removal proceedings under § 1225(b) or full removal proceedings under § 1229a. *Matter of Q. Li*, 29 I. & N. Dec. at 68. But regardless of the type of removal proceedings in which an applicant for admission who is seeking asylum is placed, she is subject to detention until the proceedings have concluded. *Id.* Petitioner was subject to detention when she was initially placed in expedited removal proceedings and seeking asylum; and she is subject to detention now that she has been provided an NTA and is still seeking asylum. Petitioner, in fact, concedes this point: "Section 1225 governs detention for both expedited removal [proceedings] and removal proceedings under Section 1229a (also known as '240 proceedings')." [Doc. 27, PageID#272.] Moreover, Petitioner was not detained under an I-200 Warrant for Arrest, which states that the detaining officer is acting under Section 236 of the INA (8 U.S.C. § 1226), nor was she provided a positive bond determination by an immigration judge that ICE then appealed. *Cf., Barrera v. Tindall*, 2025 U.S. Dist. LEXIS 184356, at *2, *4-5. The only avenue for Petitioner to obtain release from detention before her asylum claim is adjudicated is through another grant of discretionary parole under § 1182(d)(5). *Matter of Q. Li*, 29 I&N Dec. at 69.

To the extent Petitioner is challenging the timing of the commencement of her proceedings, 8 U.S.C. § 1252(g) deprives the Court of subject matter jurisdiction over that issue. *Mendez v. Johnson*, 101 F. App'x 18, 20 (6th Cir. 2004) ("The stringent limitations of § 1252(g) apply not only to the Attorney General's affirmative actions but also to his refusals to take action."); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599-600

(9th Cir. 2002); *Fathers of St. Charles v. U.S. Citizenship & Immig. Servs.*, 2025 WL 2201013, 2025 U.S. Dist. LEXIS 148130, at *11-13 (N.D. Ill. Aug. 1, 2025).

II. Petitioner's Detention for Expedited Removal was Appropriate.

Petitioner's unlawful presence in the United States was known on December 11, 2022, when she presented herself at the border to a Border Patrol agent. [Doc. 27, PageID#282; *see also* **Ex. 1**, ¶ 8 (noting that the I-213 was prepared in December 2022 and then reviewed and signed by a supervisory official in June 2023).] The agent described the unlawful crossing: Petitioner crossed the border "at a time and place other than as designed by the Secretary of the Department of Homeland Security"; Petitioner was an "undocumented noncitizen[] who illegally entered the United States"; Petitioner lacked "the necessary legal documents to enter, pass through, or to remain in the United States." [Doc. 13-1, at PageID#152-53; Doc. 24, PageID#239.] In so doing, Petitioner violated 8 U.S.C. § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I). Because of Petitioner's violation of § 1182(a)(7)(A)(i) and the determination that she was inadmissible on the date of her entry when she was apprehended at the border, she was properly placed into the expedited removal process and detained when she visited the ICE office on July 28, 2025. 8 U.S.C. § 1225(b)(1)(B)(i); *see also* [Doc. 6-2, PageID#1-7; Doc. 13, PageID#159-61]; 8 C.F.R. § 235.3(b)(2)(iii) ("An alien whose inadmissibility is being considered under this section or who has been ordered to be removed pursuant to this section shall be detained pending determination and removal.").

Subsequent court holdings have questioned the impact of the parole that was provided to Petitioner under 8 U.S.C. § 1182(d)(5), but those orders and opinions had

not been issued at the time Petitioner was detained. [*See* Doc. 27, PageID#274 (citing orders and opinions that were released on August 1, 2025, and August 29, 2025).] And now, Petitioner is not detained due to expedited removal. She is in full removal proceedings as an applicant for admission under 8 U.S.C. § 1225(b) seeking asylum, so her parole and its expiration are irrelevant, and those cases have no bearing on whether her detention is currently lawful.

Under § 1225(b), "applicants for admission" claiming a credible fear of persecution under § 1225(b)(1) "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

> Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further consideration of the application for asylum," and § 1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, 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.

Jennings, 583 U.S. at 297. Respondents have argued throughout that Petitioner was detained for expedited removal, but she was *also* an applicant for admission under § 1225(b)(1)(B)(ii) who is seeking asylum. Thus, her detention has always been lawful.[9] The only exception to this mandate would be another determination of parole which is

[9] Petitioner, likewise, admits in her brief that she could have been served with an NTA to initiate removal proceedings at any point during her stay in the United States. [*See* Doc. 27, PageID#284 ("At any point, she could have been served with an NTA to initiate removal proceedings).] On September 10, 2025, Mejia was served an NTA placing her in formal removal proceedings. [*See id.*, PageID#269, 282.]

a discretionary decision Congress vested in the Attorney General. *See* 8 U.S.C. § 1182(d)(5)(A). Further, the Attorney General's decision regarding humanitarian parole is generally non-reviewable. 8 U.S.C. § 1252(a)(2)(B)(ii) (stating that courts do not have jurisdiction to review discretionary decisions of the Attorney General regarding, *inter alia*, humanitarian parole). But, in any event, this is an academic argument because Petitioner is no longer detained under expedited removal, her claim is moot. *Contreras*, 2025 U.S. Dist. LEXIS 144127, at *8, n.3 (noting that the petitioner's challenge to being placed in expedited removal proceedings became moot after he was moved to full removal proceedings).[10]

III. Petitioner's Procedural Due Process rights were Not Violated.

In expedited removal proceedings, because Petitioner did not lawfully enter the United States, due process is what Congress has provided. *See Kaplan*, 267 U.S. at 230 (despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"); *Thuraissigiam*, 591 at 114, 139–40; *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"). Congress was clear in the expedited removal statute that foreign nationals who have not effected a lawful entry,

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10 Petitioner contends that if the Court concludes she was not a candidate for expedited removal proceedings, ICE cannot moot that fact by placing her into formal removal proceedings, but she cites to no authority for her position. [Doc. 27, PageID#279.] Petitioner is also incorrect. Noncitizens are routinely moved from expedited to full removal proceedings. *See, e.g.*, *Thuraissigiam*, 591 U.S. at 110.

and have been here for a limited period of time, may be subjected to expedited removal and "*shall* be detained" until DHS makes a final determination of their admissibility. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added).

8 C.F.R. § 235.3 sets forth the process required for completing an expedited removal detention. [Doc. 10, PageID#49, n.35.] Respondents filed in the Court record documents showing that a proper and sufficient record was created prior to Petitioner's detention. In expedited removal proceedings, "the examining immigration officer must create a record of the facts of the case and statements made by the alien. This is accomplished by means of a sworn statement using Form I-867AB." *United States v. Guzman*, 2019 WL 3220576, 2019 U.S. Dist. LEXIS 118971, at *7-8 (W.D. Va. July 17, 2019). Respondents attached the I-867AB, showing that Petitioner was presented with the opportunity to make a statement and she refused because she wanted a lawyer present. [Doc. 13, PageID#159-61.] "Further, the examining officer must advise the alien of the charges against him or her on the Form I-860." *Guzman*, 2019 U.S. Dist. LEXIS 118971, at *8. The Form I-860 was presented to Petitioner when she was detained, and she refused to sign it. [Doc. 6-2, PageID#27-28.] Petitioner had no right to counsel during her expedited removal process. *United States v. Barajas-Alvarado*, 655 F.3d 1077, 1088 (9th Cir. 2011); *see also United States v. Guzman*, 2019 WL 3220576, 2019 U.S. Dist. LEXIS 118971, at *24-25 (W.D. Va. July 17, 2019) *aff'd*, 998 F.3d 562 (4th Cir. 2021).[11] And there is no

[11] For credible fear interviews, an alien is permitted to retain a lawyer, *Guzman*, 2019 U.S. Dist. LEXIS 118971, at *24 but Petitioner's asylum process has now moved past that step, and Petitioner will present her asylum claim to an immigration judge with her counsel.

requirement for a warrant prior to detention where, as here, there is prima facie evidence—documented in this case on the I-213 [Doc. 13-1, PageID#151-53]—that Petitioner was present in the United States in violation of the immigration laws. *See* 8 U.S.C. § 1357(a); 8 C.F.R. § 287.3.

Spanish was also spoken to Petitioner, as is required. *Guzman*, 2019 U.S. Dist. LEXIS 118971, at *8. When Mejia arrived at the ERO on July 28, 2025, she was addressed in her native language of Spanish. [Doc. 13-4; Doc. 24, PageID#229-30.] In fact, the same deportation officer who spoke Spanish to Petitioner when she was asked questions from the Form I-867, [*id.*] also processed Petitioner and signed the Form I-860, Notice and Order of Expedited Removal, and the I-296, Notice to Alien Ordered Removed. [Doc. 6-2, PageID#27-33; *see also* **Ex. 1**, ¶¶ 11-12.[12]] Petitioner even testified that Spanish was spoken to her, at least intermittently, by ICE officials when she was initially detained. [Doc. 24, Transcript, at 16:24-18:16.] Language obstacles, to the extent they actually existed, had no bearing on whether Petitioner could be lawfully detained, so a habeas remedy is inappropriate. *Buriev v. Warden*, 2025 U.S. Dist. LEXIS 190160, at *7-8 (S.D. Fla. Sept. 26, 2025); *see also United States v. Barajas-Alvarado*, 655 F.3d 1077, 1088-89 (9th Cir. 2011) (ruling that even if due process was violated because interpretative assistance was not provided, he was not prejudiced because he could not establish that it was plausible that he would have been provided discretionary relief).

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12 If the Court would like to see these unredacted forms, Respondents ask the Court to grant it leave to file these documents under seal.

CONCLUSION

Petitioner's detention is authorized, and her writ petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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