

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OSCAR VILLANTES GEORGE,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 3:25-CV-02935-S-BW

**RESPONSE IN OPPOSITION TO AMENDED WRIT OF HABEAS CORPUS
AND REQUEST FOR INJUNCTIVE RELIEF**

RYAN RAYBOULD
UNITED STATES ATTORNEY

/s/ Ann E. Cruce-Haag
ANNE E. CRUCE-HAAG
Assistant United States Attorney
Texas Bar No. 24032102
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: (806) 472-7351
Facsimile: (806) 472-7394
Email: ann.haag@usdoj.gov

Attorneys for Respondents

Table of Contents

I.	Introduction	1
II.	Background.....	1
III.	Argument and Authorities	2
A.	Petitioner is not entitled to any relief, because he is an applicant for admission who may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing.	2
1.	Petitioner is considered an applicant for admission because he entered the United States without being inspected, admitted, or paroled.....	2
2.	Because Petitioner is an applicant for admission, he is subject to detention under 8 U.S.C. § 1225(b)(2).....	4
3.	Applicants for admission may be released from detention on an 8 U.S.C. § 1182(d)(5) parole, but that is a discretionary matter.....	8
4.	Recent court decisions.....	9
B.	The Due Process Clause does not entitle Petitioner to any relief.	11
1.	Even if this Court were to find that Petitioner warrants additional process, the <i>Mathews</i> factors weigh in favor of continued detention.	13
C.	There is no statutory or regulatory violation.....	17
D.	The Court should decline to issue any temporary relief.	17
IV.	Conclusion	18

Table of Authorities

Cases

Andrade v. Gonzales,
459 F.3d 538 (5th Cir. 2006) 14

Ardestani v. INS,
502 U.S. 129 (1991) 5

Ascencio-Rodriguez v. Holder,
595 F.3d 105 (2d Cir. 2010) 2

Barrios Sandoval, 2025 WL 3048926 10

Buenrostro-Mendez v. Bondi, No. H-25-3726, 2025 WL 2886346, at * 3(S.D. Tex. Oct. 7, 2025) 9

Carlson v. Landon,
342 U.S. 524 (1952) 15

Chavez v. Noem,
No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) 10

Demore v. Kim,
538 U.S. 510 (2003) 11, 12, 13, 15

Dep't of State v. Muñoz,
602 U.S. 899 (2024) 12

DHS v. Thuraissigiam,
591 U.S. 103 (2020) 3, 13

Dusenbery v. United States,
534 U.S. 161, S.Ct. 694, 151 L.Ed.2d 597 (2002) 14

Florida v. United States,
660 F. Supp. 3d 1239 (N.D. Fla. 2023) 7

Garibay-Robledo, 1:25-CV-00177, 2025 WL 2638672 10

Gonzales Martinez v. Noem, No. EP-25-cv-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025) 9

Harisiades v. Shaughnessy,
342 U.S. 580 (1952) 16

Hernandez-Fernandez v. Lyons, No. 5:25-cv-773-JKP, 2025 WL 2976923, at *7-8 (W.D. Tex. Oct. 21, 2025) 9

Jennings v. Rodriguez,
583 U.S. 281 (2018) 5, 7, 8, 13

Landon v. Plasencia,
459 U.S. 21 (1982) 14, 16

Mathews v. Diaz,
426 U.S. 67 (1976) 14, 15, 16, 17

Mathews v. Eldridge,
424 U.S. 319 (1976) 14

Matter of Castillo-Padilla,
25 I&N Dec. 257 (BIA 2010) 9

Matter of Lemus-Losa,
25 I&N Dec. 734 (BIA 2012) 3

Matter of M-S-,
27 I&N, Dec 509 (A.G. 2019) 7

Matter of Q. Li,
29 I&N, Dec 66 (BIA 2025) 7

Miranda v. Garland,
34 F.4th 338 (4th Cir. 2022) 16

Nken v. Holder,
556 U.S. 418 (2009) 16

Olalde, v. Noem, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025)2025
..... 10

Pena v. Hyde,
2025 WL 2108913 (D. Mass. July 28, 2025) 10

Rimtobaye v. Castro,
No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786 (W.D. Tex. Oct. 29, 2024) 13

Rimtobaye v. Castro, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2–3 (W.D. Tex. Oct. 29, 2024), *report and recommendation adopted*, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) 13

Rodriguez Diaz v. Garland,
53 F.4th 1189 (9th Cir. 2022) 14, 15

Rubin v. United States,
449 U.S. 424 (1981) 5

Santiago v. Noem, No. EP-25-cv-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025) 9

Vargas Lopez v. Trump,
No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) 10

Vieira v. De Anda-Ybarra, No. EP-25-cv-432-DB, 2025 WL 2937880, at *4-5 (W.D. Tex. Oct. 16, 2025) 9

Washington v. Glucksberg,
521 U.S. 702 (1997) 12

Wong Wing v. United States,
163 U.S. 228 (1896) 16

Statutes

8 U.S.C. § 1101(a)(13)(B) 9

8 U.S.C. § 1182(a) 4

8 U.S.C. § 1182(a)(9)(A)(i) 5

8 U.S.C. § 1182(d)(5) 8, 9

8 U.S.C. § 1182(d)(5)(A) 8

8 U.S.C. § 1182(d)(5)(A) 9

8 U.S.C. § 1225(a)(1) 2, 4

8 U.S.C. § 1225(a)(3) 3

8 U.S.C. § 1225(b) passim

8 U.S.C. § 1225(b)(1) 5, 8, 9

8 U.S.C. § 1225(b)(2) passim

8 U.S.C. § 1225(b)(2)(A)..... 2
8 U.S.C. § 1225(c)(1) 5
8 U.S.C. § 1226 2
8 U.S.C. § 1229a..... 4, 5, 8
8 U.S.C. § 1229a(c)(2)(A) 4
28 U.S.C. § 2241 1

Regulations

8 C.F.R. § 1.2..... 5, 10
8 C.F.R. § 212.5(a) 10
8 C.F.R. § 235.1(a)..... 5
8 C.F.R. § 235.1(f)(1)..... 5
8 C.F.R. § 235.1(f)(2)..... 5
8 C.F.R. § 1001.1(q)..... 5
8 C.F.R. § 1003.19..... 13

Other Authorities

INA § 235(b)(2)(A) 7

I. Introduction

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his recent detention by Immigration and Customs Enforcement (ICE). He alleges that he cannot be subject to mandatory immigration detention but rather must be given an individualized bond hearing in connection with his pending removal proceeding. In addition to the habeas petition, Petitioner seeks a temporary restraining order that likewise asserts that he is entitled to an individualized bond determination. As explained herein, Petitioner is not entitled to any relief on either his amended habeas petition or temporary restraining order.

II. Background

The petitioner is a native and citizen of Mexico who illegally entered the United States in 2014. App. p. 8. He entered without inspection or parole by an immigration officer. *Id.* On June 4, 2023, Petitioner was encountered by ERO after an arrest by Mansfield Police in Tarrant County, Texas. App. p. 3. ERO officers determined he was a Mexican National and was present with no legal entry. *Id.* Petitioner was arrested and transferred to the Bluebonnet Detention Facility. *Id.* Petitioner was detained, and on June 6, 2023, Petitioner was placed into removal proceedings through issuance of a Notice to Appear and was charged as removable under INA § 212(a)(6)(A)(i). He was released on his own recognizance on June 6, 2023. On February 13, 2024, Petitioner filed an EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, with the Dallas Immigration Court. On October 28, 2025, Petitioner reported to Dallas ERO Field Office and was arrested and detained.

Petitioner seeks habeas relief in three counts by which he asserts an entitlement to a bond hearing of the type he could receive if detained under § 1226. ECF 1, ¶¶ 150-158. Finally, Petitioner seeks injunctive relief arguing that he is illegally detained without a bond hearing. ECF 11.

III. Argument and Authorities

The Court should deny Petitioner's petition for the following reasons:

- A. Petitioner is not entitled to any relief, because he is an applicant for admission who may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing.**

If the Court reaches the merits of the petitioner, Petitioner is correctly detained without bond as an applicant for admission. The provision at § 1225(b)(2)(A) applies specifically to any "applicant for admission"—and calls for mandatory detention. Thus, Petitioner constitutes an "applicant for admission" who is potentially subject to § 1225(b)(2)(A) and its more restrictive mandatory detention provision.

- 1. Petitioner is considered an applicant for admission because he entered the United States without being inspected, admitted, or paroled.**

Section 1225(a)(1) deems any "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1); *see also Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that an alien who "was present in the country and had been for years," but "whose entry into the United States was not lawful or authorized" was "not

considered ‘admitted’ into the United States,” and that such aliens are “treated as ‘applicants for admission’” and “deemed to be legally at the border”).

Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, but also (2) aliens present without admission. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”); *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (“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”). Indeed, that “arriving aliens” are just one subset of the larger group of “applicants for admission” is made clear by the fact that “arriving alien” is defined as “an applicant for admission *coming or attempting to come into the United States at a port-of-entry*”—thus making clear that there are other types of applicants for admission. 8 C.F.R. §§ 1.2, 1001.1(q) (emphasis added).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a port-of-entry “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in

removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry . . . is subject to the provisions of [§ 1182(a)] and to removal under [§ 1225(b)] or [§ 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present at a port-of-entry but instead entered the United States elsewhere, in an unlawful fashion and without having been admitted. He is, therefore, an alien present without admission and, consequently, an applicant for admission.

2. Because Petitioner is an applicant for admission, he is subject to detention under 8 U.S.C. § 1225(b)(2).

Applicants for admission may be placed in expedited removal proceedings under § 1225 or, as has occurred here with respect to Petitioner, he may be placed in § 1229a removal proceedings (which are the more comprehensive form of removal proceedings that also generally apply to aliens other than applicants for admission who are charged with removability). But even if placed in § 1229a proceedings, applicants for admission may be subjected to mandatory detention under § 1225 such that they are ineligible for release on bond. Specifically, aliens present without admission placed in § 1229a removal proceedings are both applicants for admission as defined in § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). Such aliens are subject to detention under § 1225(b)(2)(A) and thus ineligible for release on bond.

Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 287

(2018); *see* 8 U.S.C. § 1225(b)(2)(A), (B)). Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under section 1229a” “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).

Thus, according to the plain language of § 1225(b)(2)(A), applicants for admission in § 1229a removal proceedings “*shall be detained.*” *Id.* (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). And as the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens—no provision within § 1225(b)(2) refers to “arriving aliens,” or limits that clause to arriving aliens, and Congress instead intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it has used that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

The BIA’s recently issued published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is consistent with these principles. In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are

applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.¹

The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.*

In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).

The decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings*.

¹ Previously, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Moreover, during the IIRIRA’s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* 29 I&N Dec. at 222–24 (discussing H.R. Rep. 104-469 (1996)). One goal of the IIRIRA was to “reform the legal immigration system and facilitate legal entries into the United States.” H.R. Rep. No. 104-828, at 1. Affording bond hearings to aliens present without admission, who have evaded immigration authorities and illegally entered the United States, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General recognized in *Matter of M-S-* that §§ 1225 and 1226(a) describe “different classes of aliens.” 27 I&N Dec. 509, 516 (AG 2019). And in *Matter of Q. Li-*, the BIA also held that an alien who illegally crossed into the United States between ports-of-entry and was apprehended without a warrant while arriving is detained under § 1225(b). 29 I&N Dec. 66, 71 (BIA 2025). These decisions make clear that all applicants for admission are subject to detention under § 1225(b). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained

discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).

Given that § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under § 1225(b)(1) or placed directly into removal proceedings under § 1229a—and further given that both “§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 302, Petitioner has no grounds to complain that he is subject to mandatory detention and is not entitled to a bond hearing.

Petitioner is properly considered an applicant for admission --specifically, an alien present without admission. He is therefore subject to detention pursuant to § 1225(b)(2)(A) and there is no requirement that he be eligible for bond.

3. Applicants for admission may be released from detention on an 8 U.S.C. § 1182(d)(5) parole, but that is a discretionary matter.

Importantly, applicants for admission may only be released from detention if the government invokes its discretionary parole authority under § 1182(d)(5), which can be exercised with respect to “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes release from detention under § 1225(b), at the government’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the

Court emphasized that “[r]egardless of which of those two sections [§ 1225(b)(1) or (b)(2)] authorizes . . . detention, applicants for admission may be temporarily released on parole” *Id.* at 288.

The parole authority under § 1182(d)(5), however, is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). And parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A)), so an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. § 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [§ 1182(d)(5)], and even after any such parole is terminated or revoked”). Here, accepting Petitioner’s theory that applicants for admission are nonetheless eligible for bond under § 1226 would run headlong against the specific grant of parole authority as to applicants for admission, in § 1182(d)(5) which Petitioner received.

4. Recent court decisions.

Although the Respondents acknowledge that there are district court decisions that hold to the contrary² (including cases identified by Petitioner (*see* ECF 1 p. 10, n. 2)), it bears mention that (1) none of these decisions are binding, (2) *Hurtado* carries far more weight considering the BIA’s subject-matter expertise on the matter and the thoroughness

² *But see* *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at * 3 (S.D. Tex. Oct. 7, 2025); *Vieira v. De Anda-Ybarra*, ___ F. Supp. 3d ___, No. EP-25-cv-432-DB, 2025 WL 2937880, at *4-5 (W.D. Tex. Oct. 16, 2025); *Gonzales Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *7-10 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at *7-8 (W.D. Tex. Oct. 21, 2025).

of its analysis, and (3) many of the courts that have ruled against the Government “appear to defer substantially to each other.” *Olalde*, 2025 WL 3131942, at *1. Many district courts have adopted the Respondents’ and the BIA’s interpretation. *See, e.g., Barrios Sandoval*, 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an “applicant for admission” subject to mandatory detention under §1225(b)(2)); *Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *accord Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 “remains an applicant for admission” in 2025).

Indeed, as sister Court reasoned in *Garibay-Robledo*, 1:25-CV-00177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025), “the plain language of the mandatory-detention provision weighs *heavily against* the petitioner’s assertion that he is subject only to discretionary detention,” and that the argument to the contrary “*flatly contradicts* the statute’s plain language and the history of legislative changes enacted by Congress.” *Id.* at *4. The Court in *Garibay-Robledo* conducted a review of legislative history and further noted that by defining “applicants for admission” broadly enough to encompass both

arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *6-7.

Respondents respectfully maintain that this Petitioner is an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history and the reasoning outlined by the Supreme Court in *Jennings*. The contrary decisions of other districts should not be followed and should not override the clear congressional mandate of detention under the provisions of 8 U.S.C. §1225(b). Accordingly, the Court should not order a bond hearing or release under the reasoning of those decisions.

B. The Due Process Clause does not entitle Petitioner to any relief.

As discussed above, the relevant immigration statutes, properly construed, provide no entitlement to relief for Petitioner. Nor does the Due Process Clause. Instead, mandatory detention under § 1225(b)(2) is constitutionally permissible—particularly where, as here, Petitioner has been detained for a very short period of time. The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, the Supreme Court upheld the constitutionality of § 1226(c), which mandates the detention of certain aliens during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2003). The Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and also reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not

require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Here, Petitioner is being detained for the limited purpose of removal proceedings and determining his removability. Such detention is not punitive or done for other reasons than to address removability, which will occur in the removal proceedings. Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Any substantive due process claim therefore fails here because “the through line of history” is that the federal government has “sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Id.* at 911, 912. Indeed, Congress in exercising this “broad power over naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526.

Similarly, Petitioner cannot succeed on a procedural due process claim. Such a claim fails because where Congress has substantively mandated detention pending

removal proceedings, an alien cannot displace that substantive choice with a procedural due process claim. As discussed, aliens are not entitled to bond hearings as a matter of substantive due process. *See Demore*, 538 U.S. at 523–29. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. And “an alien in [that] position has only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. Congress has not created any procedural rights to a bond hearing for applicants for admission. *See Jennings*, 583 U.S. at 297. “Read most naturally,” § 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* And the statute says nothing “whatsoever about bond hearings.” *Id.* No procedural due process claim is stated.

1. Even if this Court were to find that Petitioner warrants additional process, the *Mathews* factors weigh in favor of continued detention.

Even if section 1225(b) did not squarely govern Petitioner’s claim, as it does, he would not be entitled to the immediate release that he seeks. Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. *See, e.g., Rimtobaye v. Castro*, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2–3 (W.D. Tex. Oct. 29, 2024), *report and recommendation adopted*, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) (collecting cases and comparing approaches). Some courts, but not all, utilize the three-factor balancing test Petitioner urges here, which is set forth in *Mathews v.*

Eldridge, 424 U.S. 319 (1976), a case involving the termination of a citizen’s social security benefits. *Id.* The Supreme Court, however, “when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.” *Rodriguez Diaz*, 53 F.4th at 1206–07; *see also Demore*, 538 U.S. at 523, 526–29, 123 S.Ct. 1708; *see also Dusenbery v. United States*, 534 U.S. 161, 168, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002) (“[W]e have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims.”).

Other circuits have applied the *Mathews* test to due-process challenges brought to challenge civil detention. The Fifth Circuit, however, has not applied *Mathews* to due-process challenges to section 1225. Petitioner makes no argument as to why this Court should apply the *Mathews* test and offers no reason his procedural due-process claim should not be subject to the same standard as other due process challenges to section 1225 in this Circuit. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). But even if the Court were to find that *Mathews* applies, the conclusion would nevertheless be the same—Petitioner’s detention is constitutional even under *Mathews*.

Mathews outlines a three-part “flexible” test to determine whether due process complies with the Constitution. *Mathews*, 424 U.S. at 321. Under *Mathews*, courts consider: (1) the individual’s interest; (2) the risk of erroneous deprivation of the right absent further procedures; and (3) the government’s interest. *Id.* at 334. Any analysis of these factors in the immigration context must “weigh heavily” the fact 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). A correct

application of the *Mathews* test weighs against ordering the immediate release Petitioner requests.

Clearly Petitioner has a liberty interest in freedom from lengthy imprisonment. However, Petitioner's liberty interest is diminished because he is illegally in this country with no permission to remain. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings and, in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all aliens detained pursuant to § 1225, including appeals to the BIA and the Circuit Court. There is no basis in law for imposing yet more procedures that neither Congress nor the relevant agencies have adopted.

Finally, as to the third factor and final *Mathews* factor, the government's interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Accepting

Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted.

In determining what process is due in immigration proceedings, "it 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). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Mathews*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952)). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest." *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). It is thus clear that, in the case of aliens seeking admission, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Further, "[t]he continued presence of an alien lawfully . . . undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); see *Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

Therefore, all three *Mathews* factors favor the Respondent, and this Court should accordingly dismiss the Petition.

C. There is no statutory or regulatory violation.

In Count three, Petitioner alleges his continued detention without a bond hearing violates the process set forth in § 1226 or 8 C.F.R. § 1003.19. However, as discussed above, Petitioner is properly an applicant for admission subject to mandatory detention under § 1225(b)(2). As such he is not entitled to the process in § 1226 or 8 C.F.R. § 1003.19. Moreover, 8 C.F.R. § 1003.19(h)(1)(i)(B) provides that an Immigration Judge may not provide a bond hearing for arriving alien in removal proceedings, including persons paroled after arrival. 8 C.F.R. § 1003.19(h)(1)(i)(B). Petitioner can show no statutory or regulatory violation.

D. The Court should decline to issue any temporary relief.

Petitioner's request for injunctive relief is premised on his claim that his detention is unlawful and he is entitled to a bond hearing. ECF 11. Section 1225(b)(2)(A) requires mandatory detention 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[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

And Section 1225(a)(1) expressly defines that "[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this Act *an applicant for admission*." *Id.* § 1225(a)(1) (emphasis added). Petitioner does not contest that he is an "alien present in the United States who has not been admitted." By the plain language of § 1225(a)(1), then, Petitioner is an "applicant for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2).

But for all the reasons already discussed above in connection with the

consideration of these issues in the context of Petitioner's amended habeas petition, his claims fail on the merits and therefore Petitioner also is not entitled to any temporary or preliminary relief on them. Petitioner cannot show that these claims are likely to succeed on the merits because, in fact, they fail on the merits as outlined herein. *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

IV. Conclusion

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to immediate release from custody. The petition for writ of habeas corpus and request for injunctive relief should be denied.

Respectfully submitted,

RYAN RAYBOULD
UNITED STATES ATTORNEY

/s/ Ann E. Cruce-Haag
ANN E. CRUCE-HAAG
Assistant United States Attorney
Texas Bar No. 24032102
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: (806) 472-7351
Facsimile: (806) 472-7394
Email: ann.haag@usdoj.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

On December 12, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
ANN E. CRUCE-HAAG
Assistant United States Attorney