UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-25086-CIV-MARTINEZ

WILLIAM RIVERA MARTINEZ,

Petitioner,

vs.

GARRETT RIPA, KRISTI NOEM,
TODD M. LYONS, and PAMELA BONDI
in their official capacities,

Respondents.
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RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents by and through the undersigned Assistant United States Attorney hereby file their Response to Petitioner, William Rivera Martinez's (the "Petitioner") Petition for Writ of Habeas Corpus (the "Petition") and request that it be denied stating in support thereof as follows:

I. INTRODUCTION

Petitioner attempts to circumvent 8 U.S.C. § 1225(b)(2)(A), the statute under which he is lawfully detained by virtue of filing this Petition and requesting that he be released or provided a bond hearing under 8 U.S.C. § 1226(a) within fourteen days. *See* [DE 1, ¶ 4]. Petitioner argues that "Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States." [DE 1, ¶ 3]. Instead, Petitioner asserts that the authority for his detention arises under 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond for those who have entered the United States without inspection. *Id.*

However, Petitioner falls squarely within the statutory definition of aliens subject to detention under § 1225(b)(2)(A), which is consistent with the Board of Immigration Appeal's ("BIA") decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) [1]. Petitioner has also failed to exhaust his administrative remedies. Petitioner had a custody redetermination hearing before an Immigration Judge ("IJ") in which bond was denied as it was found the IJ lacked authority to consider such a request. Petitioner has not appealed this decision to date. In all, Petitioner's procedural and substantive due process rights have not been violated as he is statutorily not entitled to bond yet still was afforded a custody redetermination hearing. Accordingly, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Honduras who was encountered by officials of U.S. Customs and Border Protection ("CBP") after having entered the United States without inspection or admission on or about April 14, 2019. *See* Ex. 1, Record of Deportable/Inadmissible Alien ("Form I-213"), dated April 14, 2019. He was 15 years old at the time of apprehension and designated as an Unaccompanied Alien Child ("UAC"). *See id.*

On April 17, 2019, CBP issued Petitioner a Notice to Appear ("NTA"), charging him as inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i)(I), as an alien present in the United States without having been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Ex. 2, NTA, dated April 17, 2019. CBP transferred Petitioner's custody to U.S. Health and Human Services, Office of Refugee Resettlement ("ORR"). *See* Ex. 3, Detention

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[1] Respondents recognize that this Court previously granted a Petition for Writ of Habeas Corpus in *Cristian Aguilar Merino v. Garrett Ripa, et al.*, No. 25-cv-23845-JEM (S.D. Fla. Oct. 15, 2025) and rejected similar argument. However, Respondents maintain and preserve this argument for the record in light of evolving precedent on this issue.

History. Thereafter, Petitioner was released into the custody of his aunt on June 5, 2019. *See* Ex. 4, ORR Verification of Release.

The NTA was filed with the immigration court in Miami, Florida on March 20, 2020. The IJ terminated proceedings without prejudice on May 16, 2024, based on Petitioner being *prima facie* eligible for an immediate relative visa petition. *See* Ex. 5, Immigration Judge Order, dated May 16, 2024. At this time, Petitioner was married to a United States citizen who had filed a Form I-130, Petition for Alien Relative, on his behalf. *See* Ex. 6, Declaration of Deportation Officer Jesús R. González Alverio ("Declaration of DO Gonzalez"), ¶ 7. U.S. Citizenship and Immigration Services approved the petition on July 8, 2025. *Id.*

On October 8, 2025, Petitioner was encountered by Florida Highway Patrol officers along with U.S. Border Patrol agents, who conducted a vehicle stop for a traffic violation. *See* Ex. 7, I-213, dated October 8, 2025. He was transferred to U.S. Department of Immigration and Customs Enforcement ("ICE") custody and booked into Krome North Service Processing Center ("Krome"). On this same day, ICE issued Petitioner a second NTA, charging him as inadmissible under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i)(I), as an alien present in the United States without having been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and section 212(a)(7)(A)(i) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *See* Ex. 8, NTA, dated October 8, 2025.

On October 16, 2025, Petitioner filed a motion for custody redetermination with the Immigration Judge. *See* Ex. 6, Declaration of DO Gonzalez, ¶ 10. Petitioner's request for release on bond was denied on October 24, 2025, based on the Immigration Judge finding he did not have

jurisdiction over the Petitioner's custody status. *See* Ex. 9, Immigration Judge Bond Order, dated October 24, 2025. Petitioner reserved appeal of this decision but has not filed an appeal with the BIA to date.

III. ARGUMENT

A. Petitioner has Failed to Exhaust his Administrative Remedies as no Appeal to the BIA has been made with respect to the IJ's Denial of Bond at Petitioner's Custody Redetermination Hearing, and the Occurrence of this Hearing Supports Petitioner was Afforded Due Process.

The requirement of exhaustion may arise either from explicit statutory language or an administrative scheme that provides for agency relief. *See Sequeira-Balmaceda v. Reno*, 79 F. Supp. 2d 1378, 1381 (N.D. Ga. 2000). If a party fails to exhaust administrative remedies before seeking redress in the federal courts, the Court should dismiss the action because it lacks jurisdiction over the subject matter. *Perez-Perez v. Hanberry*, 781 F.2d 1477, 1478 (11th Cir. 1986).

The IJ denied bond stating that there was no jurisdiction as to Petitioner's custody status. Ex. 6, Declaration of DO Gonzalez ¶ 11; Ex. 9, Immigration Judge Bond Order. Petitioner argues that in light of *Matter of Yajure Hurtado*, "exhaustion would be futile because the outcome of the administrative process can be reasonably anticipated and would not constitute an adequate remedy." [DE 1, ¶ 19]. However, Petitioner did not waive his right to appeal the adverse decision of the IJ and this administrative remedy remains available. Ex. 6, ¶ 11. The BIA has authority to review same per established regulation. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Because Petitioner has failed to appeal the IJ's decision, exhaustion has not been satisfied, and dismissal of the Petition is warranted.

Further, due process only requires that the government provide 'adequate procedural protections' to ensure that the government's asserted justification for physical confinement 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.'"

Hernandez v. Warden, Etowah Cty. Det. Ctr., No. 19-cv-00746-LSC-SGC, 2020 U.S. Dist. LEXIS 158977, at *7 (N.D. Ala. July 24, 2020). Petitioner was given a custody redetermination hearing and although the outcome was not as he desired, this does not eliminate the due process that was afforded to him. *See id.* (stating that although a Petitioner may disagree with the outcome of a bond hearing this does not mean he has been denied due process).

B. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in Matter of Yajure Hurtado.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as an "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 . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.").

By its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. 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*, 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 . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category

of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted"). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

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) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission at a United States POE "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) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). "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 [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Petitioner did not present himself at a POE but instead was initially encountered by CBP officials after having entered the United States as a UAC without inspection or admission on or about April 14, 2019. *See* Ex. 1, Form I-213, dated April 14, 2019. He was considered an applicant for admission at that point, as he was present without being admitted or paroled. Petitioner was encountered on October 8, 2025 (after his prior release into the custody of his aunt) after Florida Highway Patrol officers along with CBP agents conducted a vehicle stop for a traffic violation.

See Ex. 4., ORR Verification of Release; Ex. 7, Form I-213, dated October 8, 2025. Again, he was considered an alien present in the United States without being admitted or paroled. Irrespective of which encounter is analyzed, Petitioner is an alien present in the United States without admission or parole and, consequently, considered an applicant for admission.

The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In its decision, the BIA affirmed "the [IJ'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." *Yajure Hurtado*, 29 I&N Dec. at 220.[2]

In *Matter of Yajure Hurtado*, 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.'" 29 I&N Dec. 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 BIA's decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's decision in *Jennings v. Rodriguez,* 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission,

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[2] Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-,* 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 U.S.C. § 1225(b)(1)(B)(ii) (providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien "shall be detained" for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command"); *see generally 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"). *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

C. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an IJ under § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A). Petitioner is currently in § 1229a removal proceedings and is subject to detention under § 1225(b)(2)(A). *See* Ex. 8, NTA.

Section 1225(b)(2)(A) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), "an alien who is an applicant for admission" "*shall be detained* for a proceeding under [8 U.S.C. § 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); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings "*shall* be detained." 8 U.S.C. § 1225(b)(2)(A) (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)); *see Lamie*, 540 U.S. at 534 ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)).

As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. No provision within 8 U.S.C. § 1225(b)(2) refers to "arriving aliens," or limits that paragraph to arriving aliens, as Congress 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 uses that specific term of art or similar phrasing. *See, e.g.*, *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

D. Legislative History Supports Respondents' Position that 8 U.S.C. § 1225 Requires Detention of All Aliens Who Entered the United States Without Admission—Regardless of Where or When they Arrived in the United States.

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) bolsters the understanding that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports of entry. *See* 8 U.S.C. § 1225(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 1225(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General." *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a POE or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995).

Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and

began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms of commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Former 8 U.S.C. § 1225 provided that aliens "seeking admission" at a POE who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). "Seeking admission" in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a port of entry.[3] *See id.* The legacy Immigration and

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[3] Given Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation "is of little assistance here because, . . . this is not a case in which 'Congress re-enact[ed] a statute without change.'" *Public Citizen Inc. v. U.S. Dep't of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption "of congressional ratification" of a prior statutory interpretation "applies only when Congress reenacts a statute without relevant change." *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement,* 543 U.S. 335, 349 (2005)).

Naturalization Service ("INS") regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a port of entry had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, "'[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while [aliens] who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). "To remedy this unintended and undesirable consequence, the IIRIRA substituted 'admission' for 'entry,' and replaced deportation and exclusion proceedings with the more general 'removal' proceeding." *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302.

Moreover, Congress's use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," 8 U.S.C. § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present

participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))).

Pursuant to 8 U.S.C. § 1225(b)(2)(A), when an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted," the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. *See, e.g.*, *Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (describing an alien who was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but "[sought] to remain in the country lawfully" and applied for relief in removal proceedings). Here, Petitioner is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but applying for I-130 relief, thus seeking admission. In other words, Petitioner is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Congress's significant amendments to the immigration laws in IIRIRA support DHS's position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C. § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at ports of entry. A rule that treated an alien like Petitioner, who enters the country illegally, more favorably than an alien detained after arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location." *United States v. Gambino-Ruiz*, 91 F. 4th 981, 990 (9th Cir. 2024). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.* "Congress intended to eliminate the anomaly 'under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]'" by

enacting IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA's legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a "crisis at the land border" allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA was to "reform the legal immigration system and facilitate legal entries into the United States . . . ." H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that "despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323.

Affording aliens present without admission, who have evaded immigration authorities and illegally entered the United States bond hearings before an immigration judge, 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. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of "entry" with "admission," as aliens who illegally enter the United States "gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]").

E. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

DHS has the exclusive authority to temporarily release on parole "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); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the

Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) 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). Neither the BIA nor IJs have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is deemed to refer to the Secretary of Homeland Security"). Because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Nonetheless, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and 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 [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same). Parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under 8 U.S.C. § 1182(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*,

267 U.S. at 228). Following parole, the alien "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), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2). Here, Petitioner is not eligible for parole when viewing the factual and procedural history of this case, and even if he was, he would remain an applicant for admission as parole does not constitute a lawful admission.

IV. CONCLUSION

Based upon the foregoing, the Petition should be denied as detention is lawful under § 8 U.S.C. § 1225(b)(2)(A) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court.

Dated: November 14, 2025

Respectfully submitted,

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