IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

HERIBERTO SALGADO FLORES, Petitioner, vs. KRISTI NOEM, Secretary of Homeland Security, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, SAMUEL OLSON, Field Office Director, ICE, PAMELA BONDI, Attorney General, and JACOB WELSH, Warden, Chase County Detention Center, Respondents.	)	Case No. 25-cv-03244-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Heriberto Salgado Flores ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained in Chase County Detention Center in Cottonwood Falls, Kansas, pending removal from the United States. In compliance with the Court's Order to Show Cause, Doc. 3, Pamela Bondi, Attorney General of the United States; Kristi Noem, Secretary of the Department of Homeland Security; Samuel Olson, ICE Chicago Field Office Director; the Executive Office for Immigration Review; and Jacob Welsh, Warden, Chase County Detention Center,[1] (collectively "Respondents") respectfully submit this response.

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to

[1] Pursuant to ICE's intergovernmental service agreement (IGSA) with the Chase County Detention Center, the United States represents that respondent solely in regard to this current immigration habeas matter involving a person currently detained at that jail.

obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission" and defines that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises her narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

Because Petitioner entered the country without inspection, he was never "admitted" and therefore remains an "applicant for admission" under Section 1225(a). Despite this clear statutory text, Petitioner seeks release and a judgment declaring that "he is not an applicant for admission 'seeking admission' or 'an arriving alien'" subject to mandatory detention. His petition must be denied because he has failed to exhaust his administrative remedies and his arguments are contrary to the plain language of the Immigration and Nationality Act ("INA").

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is an alien "applicant for admission." He last entered the United States without admission or parole on or around January 1992. Pet., Doc. 1, ¶¶ 2, 41; Pet. Ex. A, Doc. 1-2, p. 1. On October 1, 2025, an immigration officer served him a Notice to Appear ("NTA") for removal proceedings based on his presence in the United States without being admitted or paroled. Pet. Ex. A, Doc. 1-2, pp. 1-2. On October 20, 2025, an IJ conducted a custody redetermination hearing for Petitioner. Pet. Ex. B, Doc. 1-2. The IJ denied the Petitioner's request for release under 8 U.S.C.

§ 1226(a), concluding he had no authority to order release because Petitioner is an "applicant for admission" under 8 U.S.C. § 1225(a)(1) and thus is subject to detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner did not file an appeal with the BIA and instead filed his habeas petition on November 10, 2025.

ARGUMENT

I. Petitioner's habeas claim should be denied because Petitioner failed to exhaust his administrative remedies.

"The exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief . . . ." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986)); *see also United States v. Jenkins*, 38 F.3d 1143, 1144 (10th Cir. 1994) (vacating the district court's award of sentence credit and refusing to reach merits of appeal because Petitioner had not exhausted administrative remedies before seeking judicial review).

The administrative exhaustion requirement "serves two main purposes." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). First, it protects agency authority by giving the agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court" and by discouraging "disregard of the agency's procedures." *Id.* (citation omitted). Second, it "promotes efficiency" by permitting claims to be settled at an administrative level, and even when this is not possible, it allows for the development of "a useful record for subsequent judicial consideration.'" *Id.* (citation omitted). A petitioner pursuing an administrative claim must use "all steps that the agency holds out." *Ford v. Hudson*, No. 21-3080-JWL, 2021 WL 3032696, at *2 (D. Kan. June 1, 2021) (citation omitted).

Here, an IJ entered an order denying release under 8 U.S.C. § 1226(a) on October 20, 2025, but Petitioner failed to timely file an appeal to the BIA. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Petitioner now argues that appeal would have been futile because "the BIA

is bound by its controlling precedent" and because "an appeal to the BIA could take months or even years to be adjudicated." Pet., Doc. 1, ¶ 48. Although "[a] narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile," the exception applies only in extraordinary circumstances. *Garza*, 596 F.3d at 1203; *see also Garner v. United States*, No. 21-3138-JWL, 2021 WL 3856618, *2 (D. Kan. Aug. 30, 2021) (citation and internal quotation marks omitted). Moreover, the petitioner "bears the burden of demonstrating the futility of administrative review." *Garner*, 2021 WL 3856618, *2 (citation omitted).

"[T]he futility exception is not satisfied" merely because "the petitioner may lose time" by going through the administrative process. *Leffew v. Warden, FCI-Leavenworth*, No. 24-3238-JWL, 2025 WL 752501, *1 (D. Kan. Feb. 3, 2025); *see also Garner*, 2021 WL 3856618, at *3 (summarizing similar authorities). Further, a contention that the administrative process will take "too long" does not establish futility. *See, e.g.*, *Randolph v. Hudson*, No. 22-3049-JWL, 2022 WL 1909051, at *2-3 (D. Kan. June 3, 2022) (finding in favor of the BOP where "Petitioner acknowledges that he has not fully exhausted his administrative remedies, but argues that the process was taking too long and he is past his alleged release date"); *Johnson v. Hudson*, No. 20-3193-JWL, 2020 WL 6798808, at *2 (D. Kan. Nov. 19, 2020) (rejecting a prisoner's assertion that "exhaustion will take too long based on the time guidelines for each step of the administrative remedy process and will cause him irreparable harm"); *Gaines v. Samuels*, No. 13-3019-RDR, 2013 WL 591383, at *2 (D. Kan. Feb. 14, 2013) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 494-95 (1973) and stating "[t]he Supreme Court has required that even those inmates who may be entitled to immediate release exhaust their administrative remedies").

Similarly, this Court has denied a certificate of appealability in a habeas case challenging state court action where the petitioner failed to exhaust his state court remedies before he brought his habeas action. *Price v. Simmons*, No. 05-3328-SAC, 2006 WL 334672, at *1 (D. Kan. Feb. 14,

2006). There, the Court held that a petitioner's "belief that he would not prevail in the appellate courts is not sufficient to establish the futility of exhausting state court remedies." *Id.* Thus, Petitioner's belief that his appeal to the BIA would be unsuccessful is insufficient to overcome the exhaustion requirement.

Because Petitioner has failed to exhaust his administrative remedies, the Court should deny Petitioner's habeas petition.

II. Petitioner is properly detained under 8 U.S.C. § 1225.

Although Petitioner has failed to exhaust his administrative remedies, his Petition also fails because he is properly detained under 8 U.S.C. § 1225. Petitioner's assertion "that he is not an applicant for admission 'seeking admission'" contradicts the plain language of 8 U.S.C. § 1225 and his request for release runs afoul of the IIRIRA's goal to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

A. The IIRIRA was designed to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal. Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *In re Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (B.I.A. 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or

not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Yajure Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had the

> unintended and undesirable consequence of having created a statutory scheme where aliens who entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, *including the right to request release on bond*, while aliens who had actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

Yajure Hurtado, 29 I. & N. Dec. at 223 (emphasis added, internal quotation marks omitted) (citing *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar).

Congress discarded that regime through enactment of the IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, the IIRIRA replaced the prior focus on physical "entry" and instead made "admission" the governing touchstone. The IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the pivotal factor in determining an alien's status would be whether or not the alien has been lawfully admitted. *Hing Sum v. Holder*, 602 F.3d at 1100-01. The IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Yajure Hurtado*, 29 I. & N. Dec. at 223. IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8: sections 1225(a), 1225(b), and 1226.

B. Aliens present without permission are applicants for admission.

Section 1225(a) 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). Accordingly, 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'") (citing 8 U.S.C. § 1225(a)(1)); *In re Lemus-Losa*, 25 I. & N. Dec. 734, 743 (B.I.A. 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 . . . ."); *In re E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523 (B.I.A. 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" (citing 8 U.S.C. § 1225(a)(1))).

And "admission" under the INA does not mean mere physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is, and remains, an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border. *See In re Velasquez-Cruz*, 26 I. & N. Dec. 458, 463 n.5 (B.I.A. 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.").

Here, Petitioner falls squarely within the statutory definition. Petitioner was "present in the United States [and] has not been admitted." 8 U.S.C. § 1225(a); *see also* Pet., Doc. 1, ¶¶ 2, 41; Pet. Ex. A, Doc. 1-2, p. 1. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission. *Id.* Because Petitioner is an applicant for admission, Petitioner's detention is mandatory.

C. Applicants for admission, who are not clearly and beyond a doubt entitled to be admitted, must be detained pending removal.

Under 8 U.S.C. § 1225(b)(2)(A), "an alien seeking admission [who] is not clearly and beyond a doubt entitled to be admitted, . . . *shall* be detained" for removal. 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also* 8 U.S.C. § 1229a (removal proceedings); 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)); 8 C.F.R. § 235.3(c) (providing that "any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]" unless paroled pursuant to 8 U.S.C. § 1182(d)(5)). The statute's use of the term "shall"

makes clear that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). And, the statute makes no exception for the duration of the alien's presence in the country or where in the country he is located. *Compare* 8 U.S.C. § 1225(b) *with* Pet., Doc. 1, ¶¶ 7, 39. The statute's plain text therefore mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. 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).

Accordingly, the BIA recently issued a published decision in *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) holding as much. 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." *Yajure Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300).[2]

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

[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 who were present without admission and placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g.*, *In re Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023); *In re of R-A-V-P-*, 27 I. & N. Dec. 803, 803 (B.I.A. 2020); *In re Garcia-Garcia*, 25 I. & N. Dec. 93, 94 (B.I.A. 2009); *In re D-J-*, 23 I. & N. Dec. 572, 575 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *In re Yajure Hurtado*, 29 I. & N. Dec. at 216.

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.* The BIA's decision in *In re Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *In re M-S-*, unequivocally recognized that 8 U.S.C. §§ 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 and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225, even when they are later placed in 8 U.S.C. § 1229a removal proceedings. 27 I. & N. Dec. at 518-19. In *In re Q. Li*, the BIA held that an alien who illegally crossed into the United States between points of entry and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are

subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing 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.

Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are deemed applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *In re Lemus-Losa*, 25 I. & N. Dec. at 743; *see In re Yajure Hurtado*, 29 I. & N. Dec. at 221; *In re Q. Li*, 29 I. & N. Dec. at 68 n.3; *see also In re Valenzuela-Felix*, 26 I. & N. Dec. 53, 56 (B.I.A. 2012) (explaining that "an application for admission [i]s a continuing one"). But that is the law that Congress enacted—it "*deemed*" all such aliens applicants for admission, whether or not that were actually seeking admission.

Other textual clues in § 1225 support this conclusion. For example, "[a]ll aliens . . . who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). This phrasing indicates that Congress viewed aliens who were deemed applicants for

admission under § 1225(a)(1) as aliens seeking admission. That is, all aliens deemed applicants for admission are also deemed to be seeking admission.

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] 'shall be detained for a removal proceeding' . . . ." *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A) (alteration omitted)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens.

Moreover, *Jennings* found that 8 U.S.C. § 1225(b) "applies primarily to aliens *seeking entry* into the United States (*'applicants for admission' in the language of the statute*)." *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission. Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289.

Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ. *See Mejia Olalde v. Noem*, No. 25-cv-

00168-JMD, 2025 WL 3131942, at *2 (E.D. Mo. Nov. 10, 2025) ("The Court concludes that § 1225—not § 1226—applies, so Mejia Olalde is not entitled to a bond hearing or release."); *Silva Oliveira v. Patterson*, No. 25-cv-1463, 2025 WL 3095972, at *7 (W.D. La. Nov. 4, 2025) (concluding that the petitioner "is lawfully detained under § 1225(b)(2) and is therefore not entitled to a bond hearing"); *Barrios Sandoval v. Acuna*, No. 25-cv-01467, 2025 WL 3048926, at *7 (W.D. La. October 31, 2025) (concluding that the petitioner was "lawfully detained under § 1225(b)(2)" and "not entitled to a bond hearing"); *Vargas Lopez v. Trump*, No. 25-cv-526, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (concluding in the alternative that the petitioner was properly detained under § 1225(b)(2)); *Chavez v. Noem*, No. 25-cv-02325-CAB-SBC, 2025 WL 2730228, at *4 (S.D. Tex. Sept. 24, 2025) ("By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)"); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States.").

D. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). 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)(A); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300.

Thus, neither the BIA nor IJs have authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *See In re Castillo-Padilla*, 25 I. & N. Dec. at 261; *see also In re Arrabally and Yerrabelly*, 25 I. & N. Dec. 771, 777 n.5 (B.I.A. 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 thus deemed to refer to the Secretary of Homeland Security"); *In re Singh*, 21 I. & N. Dec. 427, 434 (B.I.A. 1996) (providing that "neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power"). Further, 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 IJ or the BIA. *In re Castillo-Padilla*, 25 I. & N. Dec. at 261; *see In re Castellon*, 17 I. & N. Dec. 616, 619-20 (B.I.A. 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Importantly, 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 v. Barber*, 357 U.S. 185, 190 (1958). 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 . . . ." *In re Abebe*, 16 I. & N. Dec. 171, 173 (1977) (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185). 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).

RECENT DEVELOPMENTS

On November 25, 2025, the U.S. District Court for the Central District of California issued an order certifying a class defined as follows:

> **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista v. Santacruz Jr., No. 25-cv-01873-SSS-BFM, slip op. at 15 (C.D. Cal. Nov. 25, 2025) (attached as Exhibit 1). Referencing its prior order on the petitioners' Motion for Partial Summary Judgment, the court further extended "the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Id.* at 14 (referencing *Maldonado Bautista v. Santacruz Jr.*, No. 25-cv-01873-SSS-BFM, Doc. 81 (C.D. Cal. Nov. 20, 2025) (attached as Exhibit 2). The court further set a status conference for January 16, 2026, and ordered the parties to submit a Joint Status Report on January 9, 2026, "which shall include how the parties will proceed with this matter." *Id.* at 15. Because the class certification order was entered only the day before the deadline for this filing, Respondents are still evaluating its effect on this case.

CONCLUSION

The Court should deny Petitioner's habeas claim because Petitioner has failed to exhaust administrative remedies and because Petitioner is properly detained under 8 U.S.C. § 1225(b) and not entitled to a bond hearing.

Respectfully submitted,

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

/s/ *Audrey D. Koehler*
Audrey D. Koehler, KS #28271
Assistant United States Attorney
United States Attorney's Office
District of Kansas
301 N. Main, Suite 1200
Wichita, Kansas 67226
PH: (316) 269-6481
FX: (316) 269-6484
Email: audrey.koehler@usdoj.gov
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

Genevra W. Alberti, #25286
Megan Bourne Galicia, #79287
MARTINEZ IMMIGRATION LAW LLC
7000 NW Prairie View Road, Suite 260
Kansas City, MO 64151
Phone: (816) 491-8105
E-mail: genevra@martinezimmigration.com
E-mail: megan@martinezimmigration.com

Attorneys for Petitioner

/s/ *Audrey D. Koehler*
Audrey D. Koehler