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

DANIEL ALEJANDRO HERNANDEZ CACERES,

Petitioner,

v.

THOMAS BERGAMI, et al.,

Respondents.

Civil Action No. 3:25-CV-03167

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

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I. Introduction

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and a temporary restraining order to challenge his recent detention by Immigration and Customs Enforcement (ICE). Petitioner alleges that he cannot be subject to mandatory immigration detention but, rather, must be released on bond. As explained herein, Petitioner is not entitled to any injunctive relief or relief on his petition.

Petitioner is lawfully detained on a mandatory basis as an alien present in the United States without inspection or parole. 8 U.S.C. § 1225(b)(2). To the extent there was ever an ambiguity regarding which statute governs detention of illegal aliens such as Petitioner, the Board of Immigration Appeals ("BIA") resolved that ambiguity on September 5, 2025. In a precedent decision, the BIA held that aliens present in the United States without being admitted or paroled (such as Petitioner) are subject to mandatory detention under Section 1225(b)(2) as applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Moreover, Petitioner is in full removal proceedings before an immigration judge, as opposed to expedited removal proceedings, which provides him with robust due process protections. Further, release on bond is not one of the protections guaranteed by statute. For these reasons, and those herein, the Court should deny the Petition and request for a Temporary Restraining Order.

II. Background

Petitioner is a native and citizen of Venezuela. App. p. 2. He entered the United States at on June 9, 2021, at an unknown place without permission or parole. *Id.* On June 10, 2021, he was placed into removal proceedings through the issuance of a Notice to

Appear (NTA) and was charged as removable under INA § 212(a)(6)(A)(i). *Id.* Petitioner filed his I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with the Dallas Immigration Court on September 15, 2022. App. p. 6. Petitioner has not requested bond, and the next individual merits hearing in his removal case is set for January 13, 2026, in the Immigration Court. App. p. 8.

III. Relevant Immigration Law

This case implicates the interplay of various statutes that govern the civil detention of illegal aliens (1) pending a decision on removal, (2) during the administration of removal orders, and (3) in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Properly construed, these statutes provide that individuals such as Petitioner are considered applicants for admission to the United States and are therefore subject to mandatory detention.

A. Inspection and detention under 8 U.S.C. § 1225.

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . .." *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[1] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i),(iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer

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[1] "Certain other aliens" are addressed in Section 1225(b)(1)(A)(iii), which gives the Attorney General the sole discretion to apply (b)(1)'s expedited procedures to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including those who have been in the country for a period of years.

determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66. 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a).

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* "[O]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary

authority to detain an alien during removal proceedings.[2] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any

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[2] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Included within the Attorney General and DHS's discretionary authority are limitations on the delegation of that authority to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien.

C. Review of custody determinations at the BIA.

The BIA is an appellate body within EOIR. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper

interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

IV. Argument and Authorities

The Petition and TRO should be denied for multiple reasons. First, the Petition is premature. Petitioner has not exhausted his administrative remedies, and the Court should exercise its discretion and dismiss the case while the administrative process continues. Second, even if the administrative remedies had been exhausted, Petitioner's argument that he is entitled to release from custody on bond is flawed because he is not statutorily entitled to bond. Finally, the Court lacks jurisdiction to entertain the Petition, which challenges Respondent's efforts to remove her from the United States and discretionary release determinations.

A. Petitioner has not exhausted administrative remedies.

The BIA is the appellate body within the EOIR that is "charged with the review of those administrative adjudications that the Attorney General may by regulation assign to it," including determinations related to bond, parole, or detention. 8 C.F.R. §§ 1003.1(d)(1); 1003.1(b)(7). The Supreme Court has "long acknowledged the general rule that parties must exhaust prescribed administrative remedies prior to seeking relief from the federal courts." *McCarthy v. Madigan* 503 U.S. 140, 144–45 (1992). Exhaustion "serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." *Id.* at 145. The rationale for administrative exhaustion applies equally in the context of seeking relief of denial of a bond hearing via a writ of habeas corpus, even

though the INA does not so mandate.[3] *McCarthy*, 503 U.S. at 144 ("But where Congress has not clearly required exhaustion, sound judicial discretion governs."); *see* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if … the alien has exhausted all administrative remedies.").

Although not mandated by statute, this Court should require Petitioner exhaust his administrative remedies. Here, the administrative process has not concluded because Petitioner can still request a custody redetermination with the Immigration Court, and if unsatisfied with that determination, appeal with the BIA. *See* 8 C.F.R. § 236.1(d)(3) ("An appeal relating to bond and custody determinations may be filed to the [BIA] …"). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted administrative remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The Fifth Circuit has held that "a petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists." *Lee v. Gonzalez*, 410 F.3d 778, 786 (5th Cir. 2005). Because the administrative process is ongoing, the Court should exercise its discretion and dismiss the Petition.

B. An APA claim is not available.

Petitioner's attempt to proceed under the APA also fails. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a

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[3] The INA only mandates exhaustion for appeals of final orders of removal.

court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must be brought in habeas." 604 U.S. 670, 672 (2025) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in a concurrence, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge any future denial of a bond hearing. Thus, even if his APA claim had merit, which it does not, the result would be the same as that in habeas—the government would presumably be required to hold a bond hearing to assess whether detention can continue. For this reason, Petitioner is not entitled to any relief on his APA claim.

C. Petitioner is subject to mandatory detention and not entitled to bond under the plain language of 8 U.S.C. § 1225(b)(2).

If the Court reaches the merits, this case turns on which of two separate statutory detention provisions can apply to Petitioner: 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a). The provision at § 1225(b)(2)(A) applies specifically to any "applicant for admission"—and calls for mandatory detention. The provision at § 1226(a), on the other hand, is more general in nature and simply says that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United

States"—with the Attorney General then given the discretion to either continue to detain the alien or to release the alien on bond or conditional parole. Thus, the relevant question here is who 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.

The statutory text supplies the answer. "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). 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, there does not appear to be any dispute that 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 or paroled after inspection by an immigration officer. 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.[4]

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[4] Previously, as alluded to in BIA decisions, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See,*

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*. 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.

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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.

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. 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. The statutory history supports the Respondent's understanding of who is considered an applicant for admission.

It is respectfully submitted that the statutory text, as discussed above, is dispositive of the relevant issue and the Court need go no further. But if the Court needs more, 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, bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under § 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), (b) (1994) (discussing "aliens arriving at ports of the United States" and "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.* § 1251(a). 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.* § 1251(a)(1)(B). Aliens were excludable if they were "seeking admission" at a port-of-entry or had been paroled into the United States. *See id.* § 1225(a); *see also id.* § 1182(a). At the time, deportation proceedings and exclusion proceedings 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). And 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) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession").

Former § 1225 provided that aliens "seeking admission" at a port-of-entry who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under § 1182(d)(5). *See id.* §§ 1225(a), (b), § 1182(d)(5). The concept of "seeking admission" in former § 1225 appears to have been understood to refer to aliens arriving at a port-of-entry. *See id.* And aliens who entered without inspection and were deportable were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See id.* §§ 1251(a)(1)(B), 1252(a)(1). That meant that "[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) (internal quotation marks and citation omitted). "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 the IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302, 110 Stat. 3009-579.

Moreover, Congress's use of the present participle—"seeking"—in § 1225(b)(2)(A) should not be ignored. *See 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," § 1225(b)(2)(A) "signal[s] present and continuing action." *See Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). And the phrase "seeking admission" should not be understood to refer to "something in the past that has ended or something yet to come." *See Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019). Thus, when pursuant to § 1225(b)(2)(A) 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. Indeed, interpreting the present participle "seeking" as denoting an ongoing process is also consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (an inadmissible alien "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) ("USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . ."). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner is an alien present without admission, and therefore an applicant for admission as defined in § 1225(a)(1), but also an alien seeking admission under § 1225(b)(2)(A).

Congress's significant amendments to the immigration laws in the IIRIRA support the notion that such aliens are properly detained pursuant to § 1225(b)—specifically, § 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 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) (quoting *Thuraissigiam*, 591 U.S. at 140). Such a scenario reflects "the precise situation that Congress intended to do away with by enacting" the 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 port of entry." *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (internal quotation marks and citation omitted).

As discussed by the BIA in *Matter of Yajure Hurtado*, 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)). As alluded to above, 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.

4. 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").

5. Recent court decisions.

Although the Respondents acknowledge that there are district court decisions that hold to the contrary[5] (including cases identified by Petitioner (*see* ECF No. 5-1, p. 19)), 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 of its analysis, and (3) many of the courts that have ruled against the Government "appear to defer substantially to each other." *Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025), 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

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[5] *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).

here when it stated that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025).

Indeed, as a sister Court in this district reasoned in *P. B. v. Bergami, et. al.* 3:25-CV-02978-O (N.D. Tex. Dec. 15, 2025), "the logical connection then is an "applicant for admission," i.e., someone present in the country illegally, who is trying to acquire legal status, is clearly an alien "seeking admission." ECF 21, p. 8. The Court in *P.B.*, concluded that "an unadmitted alien present in the country—the statutory definition of applicant for admission—who also seeks to be admitted, shall be detained." *Id.*

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). According, the Court should not order a bond hearing or release under the reasoning of those decisions.

D. The Court lacks jurisdiction to review Petitioner's claims.

The core of this Petition—a question of statutory interpretation—is not properly before the Court and must be funneled through the court of appeals. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025). First, 8 U.S.C. § 1252(g) and (b)(9) preclude review of Petitioner's claims. Although the Fifth Amendment provides for due process in immigration proceedings, the Supreme Court has "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Removal proceedings

"'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[6] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to

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[6] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Here, Petitioner raises a statutory interpretation issue regarding the statute governing his detention during removal proceedings. That detention arises from the decision to commence and adjudicate such proceedings. *See, e.g., Quezada v. U.S.*, 3:24–CV–564–L (BK), 2025 WL 747263 at *6 (N.D. Tex. Jan. 29, 2025) (barring FTCA claim under § 1252(g) where ICE arrested alien on the same day the NTA was issued and served on him). Specifically, removal proceedings commence by filing a charging document, such as an NTA, with an Immigration Court. *See Pereida v. Wilkinson*, 592 U.S. 224, (2021) ("Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge.")); *Pierre-Paul v. Barr*, 930 F.3d 684, 686 (5th Cir. 2019) ("[T]he government initiated removal proceedings [ ] by filing a notice to appear with the immigration court."); *see also* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court."). An alien's detention throughout this process arises, therefore, from the Attorney General's decision to commence proceedings, and review of claims arising from such detention is barred under § 1252(g). *See Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11,

2008). As such, judicial review of the claim that Petitioner is entitled to bond under § 1226(a) instead of detained on a mandatory basis under § 1225(b) is barred by § 1252(g).

Section 1252(b)(9) also deprives the Court of jurisdiction in this case. Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *See, e.g.,* 8 U.S.C. § 1252(b)(9); *see also El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE's initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals); *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Petitioner must present his claims before the appropriate federal court of appeals because they challenge the government's decision or action to detain him, which cannot be raised in this Court. *See* 8 U.S.C. § 1252(b)(9). Petitioner is lawfully detained in removal proceedings as an alien charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6). Nothing in the petition provides

a legal basis that obligates the government to set a bond for his release. The Court should dismiss for lack of jurisdiction.

E. 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. 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 *Matthews* test to due-process challenges brought to challenge civil detention. The Fifth Circuit, however, has not applied *Matthews* to due-process challenges to section 1225. Petitioner makes no argument as to why this Court should apply the *Matthews* 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 *Matthews* applies, the conclusion would nevertheless be the same—Petitioner's detention is constitutional even under *Matthews*.

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.

F. Petitioner is not entitled to a Temporary Restraining Order or Preliminary Injunction.

Petitioner's request for a temporary restraining order is premised on his claim that his detention is unlawful and he is entitled to a bond hearing. 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 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).

V. 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. Petitioner's motion for temporary restraining order and petition for habeas should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 17, 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
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