

The decision to grant, deny, or revoke parole is committed to the discretion of the Secretary of Homeland Security. Because the decision to revoke Petitioner’s parole is discretionary, this Court is stripped of jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to hear his challenge, and the Administrative Procedure Act (“APA”) does not provide a basis to overcome that jurisdictional bar.

As for the basis of Petitioner’s detention, he is subject to mandatory detention under Section 1225(b), since upon his revocation of parole, he reverted back to the prior status he had, and he was an arriving alien. For this reason and as discussed below, the petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the Government.

BACKGROUND

Petitioner is a citizen of Russia. Dkt. 1, ¶ 32. On or about June 30, 2022, Petitioner arrived at the Otay Mesa California, Port of Entry and applied for admission into the United States. *Id.*, ¶ 32; Ex. 1, Guerra Decl., ¶ 4. On July 1, 2022, U.S. Customs and Border Protection (“CBP”) issued Petitioner a Notice to Appear (“NTA”), charging him as an arriving alien and placing him in removal proceedings under 8 U.S.C. § 1229a. Dkt. 1, ¶¶ 33-34; Dkt. 1-3 (Notice to Appear); Ex. 1, ¶ 4. Petitioner was paroled into the United States for a period not to exceed June 29, 2023, and released from CBP custody pending his next hearing. Ex. 1, ¶ 4. On August 22, 2022, Petitioner filed an application for asylum, which is pending adjudication. Dkt. 1, ¶ 35.

On October 13, 2022, Petitioner appeared in immigration court for his first master calendar hearing. Dkt. 1, ¶ 36. The immigration judge reset for an individual merits hearing scheduled for December 22, 2027. Dkt. 1, ¶ 36.

Petitioner's parole expired on June 29, 2023. Ex. 1, ¶ 5.

On September 26, 2025, Petitioner was stopped an immigration checkpoint in Texas and detained. Dkt. 1, ¶ 38. He was transferred to Webb County Detention Center on October 15, 2025, and remains there. Dkt. 1, ¶ 38; Ex. 1, ¶ 8.

On or about November 24, 2025, Petitioner appeared before an Immigration Judge in Laredo, Texas. Ex. 1, ¶ 9. The Immigration Judge indicated an intention to deny Petitioner's bond request because the NTA alleges that he is an arriving alien, and the regulations do not permit Immigration Judges to grant bonds to arriving aliens. *Id.* Counsel for Petitioner withdrew the bond request in lieu of a denial on the bond request. *Id.*

APPLICABLE LAW

In a petition for a writ of habeas corpus, a petitioner challenges the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). Regarding detention during removal proceedings, the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their

deportation.”). As the Supreme Court has stated, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

I. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

This case involves an alien who presented himself for inspection at or near a port of entry and was paroled into the United States. Ex. 1, Guerra Decl., ¶ 4. Petitioner is classified as an “arriving alien.” See Dkt. 1-3 at 4 (Notice to Appear charging Petitioner with violation of § 212(a)(7)(A)(i)(I) of the INA, or 8 U.S.C. § 1182(a)(7)(A)(i)(I)). As defined in 8 C.F.R. § 1001.1(q), an arriving alien is “an applicant for admission coming or attempting to come into the United States at a port-of-entry An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”

By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings for arriving aliens. 8 C.F.R. § 1003.19(h)(2)(i)(B) (arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to Section 212(d)(5)). The Board of Immigration Appeals has long taken the position that arriving aliens are not eligible for bond. See *Matter of Oseimusu*, 22 I&N Dec. 19, 20 (BIA 1998). Accordingly, here, the Immigration Judge on or about November 24, 2025, indicated an intention to deny Petitioner’s bond request because the NTA alleges that he is an arriving alien, and the regulations do not permit Immigration Judges to grant bonds to arriving aliens. Ex. 1, Guerra Decl., ¶ 9. Counsel for Petitioner withdrew the bond request in lieu of a denial on the bond request. *Id.*

Alternatively, Petitioner is subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2) since Petitioner was issued an NTA and placed in full removal proceedings under Section 240 of the INA. *See* Dkt. 1-3 at 4; *see* 8 U.S.C. § 1225(b)(2)(A) (“[I]n the case 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, the alien *shall be detained* for a proceeding under section 1229a of this title [removal proceedings].”) (emphasis added).

“[W]hen the purposes of such parole shall . . . have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. 8 U.S.C. § 1182(d)(5)(A). Under 8 U.S.C. § 1182(d)(5)(A), or Section 212(d)(5)(A) of the INA, once Petitioner’s parole expired on June 29, 2023, Petitioner returned “to the custody from which he was paroled”, i.e. an alien who is an applicant for an admission and subject to mandatory detention under § 1225. Petitioner shall remain detained “until removal proceedings have concluded.” *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (“The plain meaning of those phrases is that detention must continue until immigration officers have finished “consider [ing]” the application for asylum, § 1225(b)(1)(B)(i), or until removal proceedings have concluded, § 1225(b)(2)(A).”) 8 C.F.R. § 212.5(e)(1) (upon termination of parole, the alien “shall be restored to the status that he or she had at the time of parole.”).

To the extent that Petitioner argues that the fact that he is not in expedited removal proceedings removes him from the ambit of § 1225(b)(1), he is subject to mandatory detention under § 1225(b)(2)’s “catchall provision.” *See Jennings*, 583 U.S. at 287 (noting that § 1225(b)(2)

“serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)”). This Court has already held that aliens present in the United States without admission, like Petitioner, are subject to § 1225(b)(2). *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *6 (S.D. Tex. Nov. 13, 2025) (“§ 1225(b)(2)(A) by its terms applies to her and supports the position of the Government as to mandatory detention”) (Eskridge, J.); *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (same) (Eskridge, J.).

As a result, under either § 1225(b)(1) or (b)(2), Petitioner is subject to mandatory detention.

II. The Court lacks jurisdiction to review the termination of Petitioner’s parole under the APA, because such discretionary decisions are precluded from judicial review by statute.

Plaintiff cannot obtain judicial review of DHS’s decision to deny humanitarian parole, because the grant of humanitarian parole is solely within the discretion of the Secretary of Homeland Security, rendering the decision unreviewable by this Court under Section 1252.

Under 8 U.S.C. § 1252(a)(2)(B), Congress precluded judicial review for two categories of actions:

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) **any other decision or action** of the Attorney General or the Secretary of Homeland Security the authority for which is **specified** under this subchapter **to be in the discretion of the Attorney General or the Secretary of Homeland Security**

(emphasis added). The “subchapter” in 8 U.S.C. § 1252(a)(2)(B)(ii) refers to U.S. Code Title 8, Chapter 12, Subchapter II, which comprises the statutes at 8 U.S.C. §§ 1151-1381. *See Kucana*

v. Holder, 558 U.S. 233, 239 n.3 (2010). Within those statutes, 8 U.S.C. § 1182, or Section 212(d)(5)(A) of the INA, makes the decision to revoke parole discretionary:

[t]he Attorney General **may . . . in his discretion** parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served **the alien shall forthwith return or be returned to the custody from which he was paroled** and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A) (emphasis added). Per the plain language of the statute, the grant of humanitarian parole is within the discretion of the Attorney General.² Section 1252's jurisdictional bar therefore precludes review of the decision to revoke parole.

Courts have accordingly found that they lack jurisdiction to review the decision to deny parole. *See Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (“Because Petitioner’s . . . claim involves a discretionary decision by the Attorney General [whether to grant parole], this Court is divested of jurisdiction to resolve that challenge”) (citing *Loa-Herrera v. Trominski*, 231 F.3d 984, 990–91 (5th Cir. 2000)); *see also Gisbert v. United States Attorney Gen.*, 988 F.2d 1437, 1443 (5th Cir. 1993) (8 U.S.C. § 1182(d)(5)(A) “does not require the Attorney General to parole any alien, nor does it mandate parole on any particular finding or findings or place any substantive restriction on the authority to deny parole. Because petitioners’ interests here are contingent upon the Attorney General’s discretion, they have no

² This parole authority pursuant to 8 U.S.C. § 1182(d)(5)(A) was initially delegated to the former Immigration and Naturalization Service (“INS”) and is now delegated solely to the Secretary of Homeland Security following the dissolution of INS and the creation of DHS by virtue of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

liberty interest in being paroled.”); *Loa-Herrera v. Trominski*, 231 F.3d 984, 991 (5th Cir. 2000) (in Section 1226 context, “the Attorney General’s discretionary judgment regarding the application of parole—including the manner in which the discretionary judgment is exercised . . . is not subject to review”) (internal citations omitted); *Palacios v. Dep’t of Homeland Sec.*, 434 F. Supp. 3d 500, 508 (S.D. Tex. 2020) (“[T]his court lacks jurisdiction to review denials of parole under the Immigration and Nationality Act because these actions are ‘committed to agency discretion by law.’”) (citing 5 U.S.C. § 701(a)(2) (2018) and 8 U.S.C. § 1182(d)(5)(A)).

Petitioner cannot cure the jurisdictional defect by invoking the APA, because the APA does not apply if “statutes preclude judicial review” or if “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a). As discussed above, the INA strips the Court of jurisdiction to review the discretionary parole decision. *See Vimal S. P. v. Garland*, No. 4:24-CV-04002, 2025 WL 2774400, at *4 (S.D. Tex. Sept. 26, 2025) (court does not have jurisdiction under APA to review discretionary decisions that are made unreviewable by § 1252). Accordingly, Petitioner’s APA claims must be denied for lack of jurisdiction.

III. Petitioner’s due process claim also fails.

The Court should deny Plaintiff’s remaining claims concerning an alleged Due Process violation. First, Petitioner fails to identify a Due Process violation. Petitioner’s due process claim is based on his detention of nearly two months without notice and hearing. Dkt. 1, ¶¶ 48-50. However, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore v. Kim*, 538 U.S. 510, 531 (2003)). Moreover, because

Petitioner is in full removal proceedings, he will be afforded numerous procedural protections in immigration court. Thus, there is no showing that his due process rights have been violated.

The threshold question in assessing substantive due process in executive action is whether “the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in Petitioner’s case acted in a manner that could be characterized as egregious or that would shock the conscience. Thus, the substantive due process claim set forth in the petition fails and should be denied.

CONCLUSION

For the foregoing reasons, the Government respectfully request that the Court deny Petitioner’s request for habeas relief and grant the instant motion.

Dated: December 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 16, 2025, the foregoing was filed and served on counsel for Plaintiff through the Court's CM/ECF system.

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