UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-25746-BECERRA

CRISTIAN DAVID PENAGOS QUINTERO,

Petitioner

v.

KRISTI NOEM et al.[1]

Respondents.

_____/

RESPONDENTS' RETURN AND MEMORANDUM OF LAW

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause (ECF No. 4). As set forth fully below, the Court should deny the "Motion for Petition for Writ of Habeas Corpus" (ECF No. 1) ("Petition"). The government is mindful of the Court's order to turn over records from the Petitioner's immigration proceedings.

[1] Garret Ripa, Kristi Noem, and Pamela Bondi are not proper defendants and should be dismissed from this action. A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Miami Federal Detention Center ("FDC Miami"), an administrative security federal detention center in Miami, Florida. His immediate custodian is E.K. Carlton, Warden of FDC Miami. Accordingly, the only proper Respondent in the instant case is Mr. Carlton in his official capacity, as named.

These records were received earlier today and will be provided to the Court within 24 hours of this filing.

I. BACKGROUND

Petitioner, Cristian David Penagos Quintero is a native and citizen of Colombia who entered the United States without inspection on or about July 18, 2022, at or near Eagle Pass, Texas. Border Patrol ("BP") encountered Petitioner and, after a brief interview, determined that he had unlawfully entered the United States from Mexico by swimming across the Rio Grande without having been inspected or admitted by an immigration officer at a designated port of entry. At that time, Petitioner admitted to being a citizen and national of Colombia with no right to be in or remain in the United States legally.

Petitioner was then detained at the Karnes County Residential Center in Karnes City, Texas. BP processed Petitioner for expedited removal under section 1225(b)(1) of the United States Code, INA § 235(b)(1). Because Petitioner claimed fear of returning to Colombia, he was referred to the United States Citizenship and Immigration Services (USCIS) for a credible fear interview.

On August 3, 2025, USCIS found that Petitioner had failed to establish a credible fear of persecution or torture. On or about August 5, 2025, Petitioner was served with Form I-863, Referral to the Immigration Judge after the negative credible fear finding. Petitioner requested review of USCIS's decision by an immigration judge, and ERO filed Form I-863, Referral to Immigration Judge, with the Executive Office for Immigration Review.

On August 25, 2022, an IJ held a credible fear review and vacated the negative credible fear determination and the existing expedited removal order. On September 2, 2022, ICE ERO released Petitioner on a parole with conditions, namely enrollment in the Alternative to Detention Program ("ATD"), which required weekly biometric reporting. On October 31, 2022, ICE terminated Petitioner from the ATD program, such that Petitioner was no longer required to report.

On October 31, 2022, ICE issued and personally served Petitioner with an NTA dated October 31, 2022, which was filed in the Miami Immigration Court. The NTA charged Petitioner under INA § 212(a)(6)(a)(i), for being an alien present without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General, and under INA § 212(a)(7)(a)(i)(I), as an immigrant, who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document.

Petitioner's initial master calendar hearing was set for November 25, 2024. During that hearing, the Immigration Judge advised Petitioner of his rights and rescheduled the case for another master calendar hearing to occur on August 27, 2026, to allow Petitioner additional time to find an attorney.

On November 19, 2025, Broward County Sheriff's Office arrested Petitioner for "domestic violence/battery with bodily harm." This charge remains pending. On November 22, 2025, ICE-ERO detained Petitioner upon his release from state custody. He was transferred to Florida Soft-Sided Facility – South, where he remained until December 8, 2025. He was then transferred to the

Federal Detention Center ("FDC") in Miami pursuant to an agreement with the federal Bureau of Prisons providing detention space for ICE.

Petitioner is currently detained at FDC, pursuant to section 235(b)(1)(B)(ii) of the INA, awaiting his next removal hearing at Krome Service Processing Center scheduled for January 5, 2026, and for further consideration of the application for asylum.

II. ARGUMENT

A. Petition should be Dismissed for Lack of Jurisdiction

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g), INA § 242(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *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"). "Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings." *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) Thus, Petitioner's detention while awaiting a

removal determination constitutes an action that *arises from* the Secretary's decision to commence proceedings and review of claims arising from such detention is barred under § 1252(g). Therefore, this Court lacks jurisdiction over Petitioner's claims.

Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'"). As such, judicial review of the Petitioner's claims is barred by § 1252(g).

B. <u>Petitioner has Failed to Exhaust his Administrative Remedies</u>

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.). Here, Petitioner has not taken advantage of the administrative remedies available to him. To start, Petitioner is currently in removal proceedings and has not yet been ordered removed, making such petition premature. If the Petitioner is ordered removed, he will be able to appeal to the Board of Immigration Appeals (BIA), which is the proper forum to challenge the hypothetical removal order. He has only attended one non-detained hearing in which

he asked for a continuance to find an attorney. Because of the extraordinary caseload of the immigration courts, his continuance was granted and his next non-detained hearing was scheduled for August 27, 2026. However, after his current immigration detention following an arrest for domestic violence battery with bodily injury,[2] his next hearing will be advanced being that the detained docket is more expedited such that hearings can be scheduled much sooner than those in the non-detained docket.

C. Petitioner is Properly Detained Under 8 U.S.C. § 1225, INA § 235

1. Petitioner is an applicant for admission subject to mandatory detention.

Petitioner is subject to mandatory detention under two separate subsections of 8 U.S.C. § 1225, INA § 235, specifically under section 1225(a)(1) for being an applicant for admission and under section 1225(b)(1) for being issued an NTA after having an expedited removal order vacated pursuant to a credible fear determination. INA § 235(a)(1) and INA § 235(b)(1). Both subsections specify two independent classifications that render an alien subject to mandatory detention. Petitioner's circumstances classify him under both subsections and thus subject him to mandatory

[2] It is worth noting that Petitioner in both his petition and his motion disingenuously indicates throughout that he does not have a history of violence. However, he was arrested for domestic violence battery causing bodily harm in Broward County, Florida. The case is currently pending, but the criminal court issued an order Prohibiting Victim Contact. Moreover, this new immigration detention comes in the wake of his battery arrest. Although the case is ongoing, for purposes of immigration, immigration courts may consider the totality of evidence in a police report when making bond determinations. *Matter of Salas Pena*, 29 I&N Dec. 173 (BIA 2025)(holding that an alien's recent arrest and the totality of evidence outlined in the police report are strong indicia demonstrating that the alien is a danger and does not warrant release on bond).

detention on two separate and independent grounds during the pendency of his removal proceedings.

Petitioner is an applicant for admission under section 1225(a)(1), INA § 235(a)(1). Petitioner, in his motion, concedes that applicants for admission under 1225(a)(1) are subject to mandatory detention. Pet. MTRO at p. 3, Sec. II, Par. 2. ("Individuals encountered "at or near" the border are classified as "applicants for admission," id. § 1225(a)(1), and—unless temporarily paroled under 8 U.S.C. § 1182(d)(5)(A)—**must be detained while their admissibility is resolved**")(emphasis added). Petitioner's admissibility has not yet been resolved; his removal proceedings are to determine his admissibility and are still pending. Therefore, by Petitioner's own concession in his Motion for Temporary Restraining Order ("MTRO"), he *must be detained* while his admissibility is resolved.

Nevertheless, even without Petitioner's concession, the statute is clear on the mandatory detention for applicants for admission. "[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." 8 U.S.C. § 1225(b)(2)(a), INA § 235(b)(2)(a). (emphasis added). "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as either an "alien *present in the United States who has not been admitted* or [an alien] who arrives in the United States []whether

or not at a designated port of arrival…" 8 U.S.C. § 1225(a)(1), INA § 235(a)(1) (emphasis added); *see generally Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" as used in § 1225(a)(1) includes two categories of aliens: (1) aliens, such as Petitioner, present in the United States without admission; and (2) arriving aliens. *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)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission"); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission … includes, inter alia, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1); INA § 235(a)(1)).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [port of entry "POE"] when the port is open for inspection"). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the

inspecting officer that the alien is not subject to removal … and is entitled, under all of the applicable provisions of the immigration laws … to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 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 [POE] … is subject to the provisions of section 212(a) of the Act [(8 U.S.C. § 1182(a))] and to removal under section 235(b) [(8 U.S.C. § 1225(b))] or 240 of the Act [(8 U.S.C. § 1229a)]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner does not allege that he was admitted into the United States or that he presented himself at a POE. Rather, Petitioner merely alleges that he is a citizen of Colombia who has been residing in the United States and relies on the vacatur of his expedited removal order after his credible fear interview to exaggerate the merits of his pending asylum application. However, his three-year presence in the United States and his undue emphasis on potential eligibility for relief from removal are not appropriate considerations in a habeas petition. Instead, those would be arguments for a bond hearing, not for determining the lawfulness of his detention. The only relevant facts for the present petition and motion are that (1) Petitioner is an alien present in the United States without admission and, consequently, is an applicant for admission; and that (2) no immigration officer has determined that Petitioner is clearly and beyond a doubt entitled to be admitted. Therefore, Petitioner is subject to mandatory detention because he is an applicant for admission who has not established that he is clearly and beyond a doubt entitled to be admitted,

and as a result "shall be detained for a proceeding under 1229(a)." 8 U.S.C. § 1225(b)(2)(A), INA §235(b)(2)(A).

Furthermore, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). 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.[3] 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 number of years. *Id.*; *see Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (concluding that 1996 amendments to the INA were passed

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

to address the unintended and undesirable result of the pre-1996 law in which "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings" (internal quotation marks omitted)). 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.'" *Yajure Hurtado*, 29 I&N Dec. at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original).

2. <u>Petitioner is subject to mandatory detention as an alien initially placed in expedited removal proceedings and transferred to full proceedings only after a credible fear finding.</u>

Furthermore, Petitioner focuses his arguments on *Yajure Hurtado* and on being an application for admission in 240 proceedings, but ignores the fact that he subject to mandatory detention pursuant to § 1225(b)(1) insofar as he was placed in expedited removal proceedings and a Notice to Appear was issued, placing Petitioner in 1229a removal proceedings after a positive credible fear determination by an Immigration Judge. *See also Matter of M-S-*, 271 I. & N. Dec. 509, 511 (BIA 2019)("an alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond."). Applicants for admission who were intercepted at entry can be subject to an

expeditious process to remove them from the United States under 8 U.S.C. § 1225(b)(1). Under this process—known as expedited removal—applicants for admission arriving in the United States (as designated by the Secretary of Homeland Security) who entered illegally and lack valid entry documentation or make material misrepresentations shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

To qualify for expedited removal, an alien must either lack entry documentation or seek admission through fraud or misrepresentation. INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i) (referring to § 212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security ("Secretary") has designated for expedited removal. The Secretary may designate "any or all aliens" who have "not been admitted or paroled into the United States" and also have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). At the relevant time, the Secretary (and previously the Attorney General) designated only subsets of that class. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (Nov. 13, 2002); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (Aug. 11, 2004) ("2004 Designation").

Here, Petitioner was within the designated group of aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880. For an alien originally placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either "an intention to apply for asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* INA § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." *Id.* § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii). That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R. § 208.30(d)—in other words, whether there is a "significant possibility" that the alien is eligible for "asylum under section 208 of the [INA," "withholding of removal under section 241(b)(3) of the [INA]," or withholding or deferral of removal under the Convention Against Torture ("CAT"). 8 C.F.R. § 208.30(e)(2)–(3). If the alien does not establish a credible fear, the asylum officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(B)(iii)(I), 8 U.S.C. § 1225(b)(1)(B)(iii)(I). But if the alien does establish such a fear, he is entitled to "further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii).

By regulation, that "further consideration" takes the form of full removal proceedings under section 240 of the INA. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited removal establishes a credible fear, he receives a full hearing before an immigration judge.

Section 235 of the INA expressly provides for the detention of aliens originally placed in expedited removal. Such aliens "shall be detained pending a final determination of credible fear." INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Aliens found not to have a credible fear "shall be detained . . . until removed." *Id.* Aliens found to have such a fear, however, "shall be detained for further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). Like all aliens applying for admission, however, aliens detained for further consideration of an asylum claim may generally be "parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit." *Id.* § 212(d)(5)(A). Accordingly, the INA's implementing regulations note that while aliens in expedited proceedings will be detained, if an alien establishes a credible fear, "[p]arole . . . may be considered . . . in accordance with section 212(d)(5) of the INA [(8 U.S.C. § 1182(d)(5))]and [8 C.F.R.] § 212.5." 8 C.F.R. § 208.30(f).

The Supreme Court in *Jennings v. Rodriguez,* 138 S.Ct. 830 (2018), reviewed the expedited removal statute in 2018 following arguments by aliens detained under the Immigration and Nationality Act – including aliens, such as Petitioner, transferred from expedited to full proceedings after establishing a credible fear—that the statute did not permit their "prolonged detention in the absence of . . . individualized bond hearing[s]." 138 S.Ct. at 839 (internal quotation

marks omitted). In reviewing the detention authority, the *Jennings* court noted that an alien who "arrives in the United States," or "is present" in the country, but who "has not been admitted" is treated as "an applicant for admission." *See Jennings v. Rodriquez*, 138 S.Ct. 830, 836 (2018) (quoting 8 U.S.C. § 1225).

Of relevance, in *Matter of M-S-*, the Attorney General held that "[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole." 27 I&N 509 (A.G. 2019). Petitioner falls squarely within this category of aliens and is subject to mandatory detention under the INA. It is worth noting that Petitioner also concedes that aliens in this category are indeed subject to mandatory detention. Pet. MTRO at p. 3, Sec. II, Par. 2. ("Second, the INA authorizes mandatory detention of certain recent entrants and applicants for admission under 8 U.S.C. § 1225(b)").

The BIA's decisions in *Matter of M-S-* and *Matter of Yajure Hurtado* are consistent not only with the plain language of § 1225(b)(2), but also with *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and other caselaw issued subsequent to *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

(explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).[4]

A review of the 1996 amendments to the INA support the reading advocated by the Respondents here. "The statutory definition of an 'applicant for admission' at … § 1225(a)(1), was added to the INA in 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA'), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579." *Yajure Hurtado*, 29 I&N Dec. at 222.

> Prior to the 1996 amendment, the INA assessed status on the basis of "entry" as opposed to "admission." *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, whether voluntarily or otherwise"). Non-citizens who had "entered" the United States were processed for deportation; those who had not "entered" were sent into exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale–Loehr, 1–1 IMMIGRATION LAW AND PROCEDURE § 1.03(2)(b) (2010). As a result, "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," while non-citizens who actually presented themselves to authorities for inspection were restrained by "more summary exclusion proceedings." *Hing Sum*, 602 F.3d at 1100. 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.

Martinez, 693 F.3d at 413 n.5 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)).

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[4] There is no textual basis for arguing that § 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).

If, as Petitioner argues, § 1225(b) detention does not apply to him because he entered the United States without presenting himself for inspection or admission, he would be afforded greater substantive rights—specifically permissive detention under § 1226(a) and a bond hearing—than non-citizens who followed the law and presented themselves to authorities for inspection. This is the undesirable result Congress was seeking to avoid by passing the IIRIRA.

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under § 1225(b)(1) and ineligible for release on bond.

Legal developments and the ongoing evolution of law, starting with *Jennings* and the caselaw that followed, through and including *M-S-* and *Yajure Hurtado*, have led us to the conclusion that INA 235(b)(1) is the appropriate detention authority. This is consistent with the detention authority invoked when Petitioner was first detained in 2022, and released on discretionary parole. His intervening arrest has led him into DHS custody, and detention remains lawful under section 1225(b)(1) of the INA.

3. Petitioner's parole was terminated and his past terminated parole provides no basis for habeas relief.

Petitioner emphasizes having been previously paroled pursuant to Section 1182(d)(5) to suggest that he is no longer subject to mandatory detention. However, Petitioner's position ignores statutes and relevant case law pertaining to the parole mechanism. *See M-S,* 27 I&N 509; *Matter*

of Q. Li, 29 I&N 66 (BIA 2025); INA § 235(b), 8 U.S.C § 1225(b). Parole is discretionary and may terminate at any time under 8 U.S.C. § 1182(d)(5). INA § 212(d)(5).

Parole is governed by 8 U.S.C. § 1182(d)(5)(A) which indicates that when the purpose of parole has been served, the alien is returned to their pre-parole custody. INA § 212(d)(5).

> The Secretary of Homeland Security 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.

Id. Further, the regulations confirm that "[p]arole shall be automatically terminated…at the expiration of the time for which parole was authorized, and…that no written notice shall be required." 8 C.F.R. § 212.5(e). Petitioner's parole document clearly states that it is valid for one year from the date issued, which was September 1, 2022. This expiration date rendered Petitioner's parole terminated on or about September 1, 2023. Most significantly, Petitioner admits that his parole was only authorized for one year. Pet. MTRO at p. 2, par. 5; Petition at p. 2, par. 5. Thus, it is undisputed that Petitioner's parole had long been terminated at the time of his immigration detention on November 22, 2025. As a result of the termination of parole, Petitioner returned to the custody from which he was paroled, that is, mandatory detention pursuant to 1225(b)(1) as an

alien in removal proceedings after a positive credible fear finding, or mandatory detention under 1225(b)(2)(A) as an applicant for admission. INA § 235(b)(1) and § 235(b)(2)(A).

Contrary to Petitioner's argument, this transfer from expedited removal proceedings to "full proceedings" did not make Petitioner eligible for bond. The Attorney General already addressed bond in such circumstances explaining that "the Act renders aliens transferred from expedited to full proceedings after establishing a credible fear *ineligible for bond*." *M-S*, 27 I&N at 518. Therefore, upon termination of his parole, Petitioner became subject to mandatory detention and ineligible for bond.

III. CONCLUSION

For the reasons set forth above, the Court should deny the Petition.

Respectfully submitted,

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By: */s/ Michele S. Vigilance*
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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/Michele S. Vigilance

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