



immigration detention or alternatively, a bond hearing before an Immigration Judge. *See Dkt. No. 1* at 12. In the Motion for TRO, Petitioner seeks the same relief: immediate release from immigration detention or alternatively, a bond hearing. *Dkt. No. 2* at 6. On December 30, 2025, an Immigration Judge granted Petitioner bond in the amount of \$5,000.00. *Gov't Ex. 1*. Petitioner has since been released from immigration detention. *Gov't Ex. 2*.

## ARGUMENT

### A. THE PETITION AND MOTION FOR TRO ARE MOOT BECAUSE PETITIONER HAS BEEN RELEASED FROM IMMIGRATION CUSTODY.

Federal Rule of Civil Procedure 12(b)(1) governs challenges to a court's subject matter jurisdiction. "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies. Mootness is a question of subject matter jurisdiction, *Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004), and if a question of mootness arises, the court must resolve it before it can assume jurisdiction, *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30 L.Ed.2d 413 (1971). A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980). "If a dispute has been resolved or if it has evanesced because of changed circumstances ... it is considered moot." *American Med. Ass'n v. Bowen*, 857 F.2d 267, 270 (5th Cir.1988).

Petitioner has been released from immigration custody on bond. *Gov't Ex. 2*. Accordingly, Petitioner has obtained the relief that he is seeking in his Petition and Motion for TRO. *Dkt. No. 1* at 12; *Dkt. No. 2* at 6. Because Petitioner has obtained his requested relief, there is no live

controversy in this matter. *See, e.g., Nieto-Ramirez v Holder*, 583 F. Appx 330, 331-32 (5th Cir. 2014) (dismissing habeas petition as moot because the petitioner’s “is no longer detained, and her requested bond hearing is of no use”).

**B. PETITIONER HAS NOT ESTABLISHED A SUBSTANTIAL LIKELIHOOD THAT HE WILL SUCCEED ON THE MERITS.**

For the Motion for TRO to succeed, Petitioner must establish the following: “(1) a substantial likelihood that [he] will succeed on the merits, (2) a substantial threat that [he] will suffer irreparable injury if the [TRO] is not granted, (3) that the threatened injury to [him] outweighs the threatened harm the [TRO] may do to defendant, and (4) that granting the [TRO] will not disserve the public interest. *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)).

In a petition for a writ of habeas corpus, the petitioner is challenging 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). When it comes to detention during removal proceedings, it is well-taken that 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 in no unmistakable terms, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

The Government’s contends that Petitioner has not established a substantial likelihood that he will succeed on the merits because he is clearly subject to the mandatory detention authority

under 8 U.S.C. § 1225(b)(2). Petitioner is an alien who is present in the United States without having been admitted or paroled. As discussed below, an alien “present in the United States who has not been admitted,” is by definition “an applicant for admission.” 8 U.S.C. § 1225(a)(1). Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that “the alien shall be detained” in the case of “an alien seeking admission” who “is not clearly and beyond a doubt entitled to be admitted” (emphasis added)).

“As usual, we start with the statutory text.” *Restaurant Law Center v. U.S. Dep’t of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides the following:

in 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 [removal proceedings].

8 U.S.C. § 1225(b)(2). Based on this text, if an alien is an “applicant for admission,” then they are subject to mandatory detention. The INA defines “applicant for admission” as “an alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). Here, the Petitioner was not previously admitted to the United States, and he has not otherwise shown that he is entitled to be admitted. The Petitioner is therefore subject to mandatory detention and is not eligible for a bond.

Petitioner may argue, and other courts have mistakenly held, that there is a separate requirement: that Petitioner also be “seeking admission.” But, in the context of § 1225(b)(2), “seeking admission” and “applying for admission” are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive— a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person “seeking admission” is just another way of describing a person applying for admission, meaning he is an applicant for

admission, which includes both those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

A comparison of Section 1225’s mandatory-detention provisions against the discretionary detention provisions of Section 1226 also supports the Government’s interpretation. A basic canon of statutory construction is that a specific provision should govern over a more general provision encompassing that same matter. *See Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024). Here, Section 1226(a) is the general provision, applicable to aliens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are “applicants for admission”—a specially defined subset of aliens that explicitly includes those “present in the United States who ha[ve] not be admitted.” *Id.* § 1225(a). So while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained.<sup>2</sup> The Court should be loath to eviscerate the specific text of Section 1225(b)(2)(A) in favor of the more general text of Section 1226(a). *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (“It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]”). Because Petitioner falls squarely within the definition of individuals deemed to be “applicants for admission,” the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

Alternatively, even if the terms “seeking admission” and “applying for admission” are not plainly synonymous, additional provisions of the INA indicate that applicants for admission are deemed to be “seeking admission” irrespective of their length of time in the United States. Section

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<sup>2</sup> To be clear, there remains a large population of aliens who remain subject to § 1226 discretionary detention (and not § 1225 mandatory detention). For example, aliens who were admitted to the United States via a tourist visa, but who overstayed that visa, are subject to § 1226 detention.

1225(a)(4) permits an alien applying for admission “*at any time* ... to withdraw the application for admission and depart immediately from the United States.” The explicit inclusion of “at any time” demonstrates that Congress intended applicants for admission to be deemed “seeking admission” for however long they remain in the United States. *See HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass’n*, 594 U.S. 382, 393 (2021) (holding in the context of a renewable energy statute that Congress’s inclusion of the phrase “at any time” has an “expansive meaning” that may include any point in the future). Congress included this phrase without any limitation as to the temporal period or location in which an alien makes an application for admission. As such, Congress clearly intended for applicant for admissions to be making an application for admission for as long as they remain in the United States, and they may withdraw that application “at any time” to be released from mandatory detention and depart the United States. 8 U.S.C. § 1225(a)(4).

Additionally, Section 1229a places the burden on applicants for admission in removal proceedings to establish that they are “clearly and beyond doubt entitled to be admitted and [are] not inadmissible under section 212.” 8 U.S.C. § 1229a(c)(2). If an alien can establish that they have been admitted, then the Government has the burden of establishing that the alien is deportable. *See* 8 U.S.C. § 1229a(c)(3); 8 U.S.C. § 1227(a). An “admission” is therefore a status that determines which party in removal proceedings has the burden of proof and under which section of the INA (8 U.S.C. § 1182 or § 1227(a)) an alien may be deemed removable from the United States. Because the INA places the burden on applicants for admission to demonstrate that they are entitled to be admitted to the United States, applicants for admission are therefore deemed to be “seeking admission” in removal proceedings at the moment when an Immigration Judge must determine whether they are removable from the United States. 8 U.S.C. § 1229a(c)(1).

Finally, an applicant for admission is “seeking admission” by pursuing an avenue for relief from removal that would make them “lawfully admitted for permanent residence,” as defined in 8 U.S.C. § 1101(a)(20). *See* 8 U.S.C. § 1229(c)(4)(A) (permitting aliens in removal proceedings to apply for relief or protection from removal). Petitioner concedes in his Petition that he is seeking cancellation of removal and adjustment of status for certain nonpermanent residents pursuant to 8 U.S.C. § 1229b(b). **Dkt. No. 1** at 5. If Petitioner establishes eligibility for cancellation of removal, this form of relief would cancel his removal and adjust his status to that of an alien “*lawfully admitted* for permanent residence.” 8 U.S.C. § 1229b(b)(1) (emphasis added). Congress intended the terms “admission” and “admitted” to have the same meaning. *See* 8 U.S.C. § 1101(a)(13)(A). 8 U.S.C. § 1101(a)(20) incorporates the term “admitted” from 8 U.S.C. § 1101(a)(13)(A). Under the plain language of the statute, aliens who have been granted cancellation of removal are deemed “lawfully admitted.”<sup>3</sup> Therefore, Petitioner is currently “seeking admission” by pursuing relief that would allow him to be deemed lawfully admitted to the United States.

If granted cancellation of removal, Petitioner would no longer be removable under 8 U.S.C. § 1182. Rather, he would only be deportable under 8 U.S.C. § 1227(a), as an alien who is “in and admitted to the United States.” The plain language of the statute makes this perfectly clear: “[a]n alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States ... unless [one of the exceptions apply]. U.S.C. § 1101(a)(13)(C); *see Matter of Pena*, 26 I&N dec. 613 (BIA 2015) (explaining that aliens who are

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<sup>3</sup> This is, of course, a legal fiction. Under the INA, “admission” and “admitted” mean the “legal entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Aliens granted cancellation of removal pursuant to 8 U.S.C. § 1229b(b), however, are deemed to have effectuated a lawful entry, despite having never entered the United States legally, because they are considered “*lawfully admitted* for permanent residence.” 8 U.S.C. § 1101(a)(20) (emphasis added). This must be true. Otherwise, neither the grounds of inadmissibility nor deportability, under 8 U.S.C. § 1182 and 8 U.S.C. § 1227(a) respectively, would apply to aliens who did not enter the United States lawfully but are later granted cancellation of removal.

lawfully admitted for permanent residence cannot be regarded as seeking an admission and may not be charged with grounds of inadmissibility under 8 U.S.C. § 1182 unless the alien falls within one of the exceptions in section 101(a)(13)(C) of the Act). Because aliens who are granted cancellation of removal are only deportable under 8 U.S.C. § 1227(a), and this statute explicitly only applies to aliens who are admitted, applicants for admission who are pursuing cancellation of removal under 8 U.S.C. § 1229b(b) are therefore “seeking admission” to the United States. As Petitioner is pursuing this form of relief, he is subject to the mandatory detention authority under 8 U.S.C. § 1225(b)(2).

**C. PETITIONER HAS NOT ESTABLISHED A SUBSTANTIAL THREAT THAT HE WILL SUFFER IRREPARABLE INJURY IF THE TRO IS NOT GRANTED.**

The Government further contends that Plaintiff has not established the second essential element for obtaining a TRO, namely that there is a likelihood of irreparable injury if the TRO is not granted. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) (explaining that the party seeking injunctive relief must demonstrate that irreparable injury is likely—not merely possible—in the absence of an injunction). Here, Petitioner has not established that irreparable injury is likely if the Court does not grant the Motion for TRO. Petitioner has been released from immigration custody after being granted bond by an Immigration Judge. **Gov’t Ex. 2.** As such, Petitioner will not suffer irreparable injury if the Motion for TRO is denied because he has already obtained the relief that he is seeking from the Court. There is also no evidentiary basis to assume that DHS will redetain Petitioner, but even if he is placed back in immigration custody, Petitioner may continue to seek cancellation of removal or another form of relief before an immigration judge while he is in detention. *See* 8 U.S.C. § 240(c)(4)(A); 8 C.F.R. § 1240.11(c).

**CONCLUSION**

The Government respectfully requests that the Court dismiss both the Petition and Motion for TRO as moot because Petitioner has already been released from immigration custody. The Government further moves to dismiss Petitioner’s Motion for TRO for failure to state a claim because Petitioner has not shown a substantial likelihood that he will succeed on the merits of his claim or a likelihood that he will suffer irreparable injury.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on January 14, 2026, the foregoing was filed and served through the Court’s CM/ECF system.

*s/ Alexander McDonough*  
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