

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

A.M.,

Petitioner,

v.

KEVIN JOYCE, Sheriff, Cumberland County; PATRICIA HYDE, Boston Field Office Director, U.S. Immigrations and Customs Enforcement; MICHAEL KROL, HSI New England Special Agent in Charge; TODD LYONS, Acting Director, U.S. Immigrations and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; and DONALD J. TRUMP, President of the United States,

Respondents.

No. 2:25-cv-00615-LEW

RETURN AND RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondents oppose the Emergency Verified Petition for Writ of Habeas Corpus and request for emergency injunctive relief filed under 28 U.S.C. § 2241 by petitioner A.M.¹ Dkt. #1, Dec. 11, 2025 (the “Petition” or “Pet.”). Petitioner’s arrest and detention was initiated by U.S. Immigration and Customs Enforcement (“ICE”) on December 5, 2025, in Massachusetts. Pet. ¶¶ 4, 9, 24. Petitioner was subsequently transported to the Cumberland County Jail, in Portland, Maine. *Id.* ¶¶ 7, 10. Government counsel has confirmed that Petitioner remains in ICE custody at the Cumberland County Jail. He will not be removed from the District of Maine pending further order from this Court. *See* Order at 2.

¹ Petitioner has provisionally been granted anonymity in this case pending further proceedings. *See* Order to Show Cause and Enjoining Petitioner’s Removal from Maine (the “Order”), Dkt. #8 at 2, Dec. 11, 2025. The Government follows Petitioner’s lead by using the initials “A.M.” to refer to him.

This case is distinct from recent immigration habeas cases filed in this District, which have primarily dealt with petitioners who—critically—had not initially been examined under 8 U.S.C. § 1225 and paroled into the United States under 8 U.S.C. § 1182(d)(5)(A). *But see Chanaguano Caiza v. Scott*, 1:25-cv-00500-JAW, 2025 WL 3013081, at *7-8 (D. Me. Oct. 28, 2025) (finding no denial of due process where petitioner detained pursuant to § 1225(b)(2) following the expiration of his parole under § 1182(d)(5)(A)). Petitioner, however, was subjected to inspection in 2021 and received such a temporary parole. By his own admission, Petitioner’s parole only “extended until September 6, 2025.” Pet. ¶ 20; *see also* Ex. 1, I-94 Record of Admission (listing as an “Admit Until Date” September 6, 2025).² Because his parole has now ended, Petitioner is restored to the status he had prior to parole—mandatory detention. Accordingly, the true cause of Petitioner’s detention is pursuant to 8 U.S.C. § 1225(b)(2). 28 U.S.C. § 2243.

I. Introduction

To warrant a grant of the writ of habeas corpus, Petitioner bears the burden of proving by a preponderance of the evidence that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see also Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948). Petitioner cannot meet this burden. ICE maintains mandatory detention authority to hold Petitioner without bond pursuant to 8 U.S.C. § 1225(b)(2). Even were this Court to alternatively conclude that Petitioner is instead detained pursuant to the broad civil

² The Federal Rules of Civil Procedure apply to § 2241 proceedings. *See* FED. R. CIV. P. 81(a)(4); FED. R. CIV. P. 12(b)(6). The Government takes as true all well-pleaded factual allegations, *see Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), but submits that Petitioner’s “threadbare or speculative” allegations should be disregarded, *see Pruell v. Caritas Christi*, 678 F.3d 10, 13 (1st Cir. 2012). The provisions of 28 U.S.C §§ 2246-2247 further permit affidavits and documentary evidence to be submitted.

arrest and detention authority provided under 8 U.S.C. § 1226(a), he could nonetheless avail himself of the various due process protections provided under that provision.

Petitioner's detention thus does not violate the Due Process Clause of the Fifth Amendment. Nor has Petitioner been "illegally targeted [] for detention because of his Afghan nationality." Pet. ¶ 35. Petitioner's equal protection arguments fail because, as mentioned, his detention occurred independent of recent immigration developments focused on Afghan nationals. Regardless, the Government's actions would pass rational basis review.

II. Background

A. Facts Alleged by Petitioner

This 28 U.S.C. § 2241 application arises from Petitioner's detention initiated by ICE, who arrested Petitioner outside his Boston-area home on December 5, 2025. Pet. ¶¶ 4, 9. Petitioner is a citizen of Afghanistan. *Id.* ¶¶ 1, 35. Petitioner alleges that he is "in valid special immigrant status," ostensibly acquired through his support of U.S. military operations in Afghanistan. *Id.* He alleges having received Special Immigrant Visa status from the U.S. Citizenship and Immigration Service ("USCIS"). *Id.* ¶¶ 2, 21, 27. However, as shown by Petitioner's Form I-360 Special Immigrant Visa ("I-360") appended to the Petition, "[t]he approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status." Dkt. #1-4 at 1. Indeed, the I-360 broadcasts in capitalized, bold-faced font, "**THIS NOTICE IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.**" *Id.* Ultimately, Petitioner acknowledges that he "does not have a finally approved immigration status. . ." Pet. at p. 1 n.2. No legal immigration status is

therefore plausibly alleged in the Petition. To the contrary, Petitioner is not legally present in the United States.

In September 2021, the Government evacuated Petitioner and his family from Afghanistan. Pet. ¶¶ 2, 18. “After extensive background and identity checks, the Department of Homeland Security granted [Petitioner and his] family parole into the United States.” *Id.* Petitioner “was paroled into the United States on September 7, 2021.” *Id.* ¶ 8. This parole occurred under the legal authority provided “pursuant to 8 U.S.C. § 1182(d)(5), [Immigration and Nationality Act (“INA”)] § 212(d)(5).” *Id.* ¶ 20.³ As the First Circuit recently explained, “Section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A), grants the [DHS] Secretary discretion to parole non-citizens into the United States.” *Doe v. Noem*, 152 F.4th 272, 279 (1st Cir. 2025). In connection with such parole, Petitioner “received additional screening at the airport and on a military base after [his] arrival in the United States.” *Id.*

Petitioner’s “parole was initially granted for two years, and subsequently extended until September 6, 2025.” Pet. ¶ 20. Tellingly, he does not allege—because he cannot—being in any active parole status. Petitioner’s allegation that his parole was “terminated” is therefore incorrect. Rather, for these past few months, his parole was expired.

Petitioner “filed an I-485 application for adjustment of status to permanent resident.” Pet. ¶ 23. The USCIS Boston Field Office denied Petitioner’s application for permanent residency, however, and “referred [him] to the Immigration Court for

³ The Petition erroneously refers to parole being granted in 2025 on September 7. *Id.* The correct date, as shown by reference to Petitioner’s and the Government’s documentation, is September 7, 2021. See Dkt. #1-3; Ex. 1, I-94 Record of Admission; see also Ex. 3 at 1, I-862 Notice to Appear (Sept. 8, 2025) (“You arrived in the United States at or near Dulles, Virginia, on or about September 7, 2021”).

further proceedings.” *Id.* ¶ 23.

B. Additional Facts Submitted by the Government

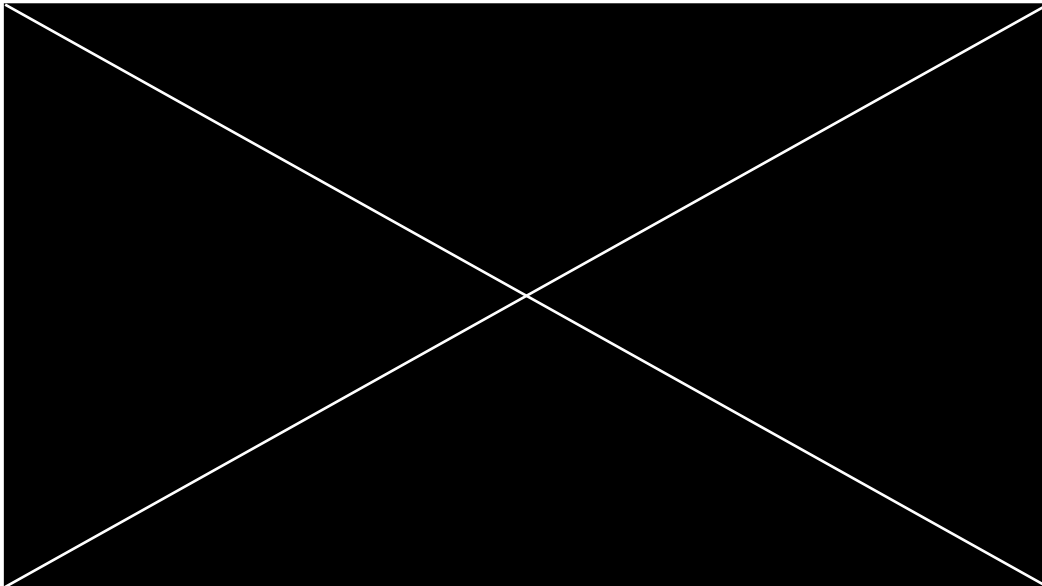
USCIS denied Petitioner’s permanent residency application based on his misrepresentation of material facts to immigration officials. *See Ex. 2, USCIS Denial of Permanent Residency Application (Sept. 8, 2025)*. This included, but was not limited to, Petitioner’s submission of [REDACTED]

[REDACTED] *Id.* at 10.

Furthermore, Petitioner was “placed under oath and a sworn statement was signed for by [him] during which [he] provided testimony that five of [his] children were born in Pakistan.” *Id.* [REDACTED] stated that his children were born in Afghanistan. *Id.*

USCIS also denied Petitioner’s permanent residency application based [REDACTED]

[REDACTED] USCIS wrote as follows:



Id. at 10.

Also on September 8, 2025, Petitioner was served with a Notice to Appear

(“NTA”) in removal proceedings in Immigration Court in Massachusetts, citing that he was “an arriving alien.” *See* Ex. 3 at 1, I-862 Notice to Appear (Sept. 8, 2025). The NTA alleged that Petitioner is “an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.” Also alleged in the NTA, related to the USCIS findings, was that Petitioner “provided fraudulent documentation about [his] identity and marriage in support of [his] Form 1-360 and Form 1-485,” and therefore “sought to procure [] a visa, other documentation, or admission into the United States or other benefit provided under the Immigration and Nationality Act, by fraud or by willfully misrepresenting a material fact. . .” *Id.* He was respectively charged as removable pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) [INA § 212(a)(7)(A)(i)(I)] and 8 U.S.C. § 1182(a)(6)(C)(i) [INA § 212(a)(6)(C)(i)]. *Id.*

On December 5, 2025, a Form I-200 Warrant for Arrest of Alien was issued and executed as to Petitioner. Ex. 4, I-200 Warrant for Arrest of Alien (Dec. 5, 2025).

C. Petitioner’s Claims for Relief

Based on these underlying facts, Petitioner mounts three claims for relief. Pet. ¶¶ 26-35.⁴ In Count One, Petitioner asserts a Due Process Clause violation under the Fifth Amendment, focusing on “whether [his] detention is justified when there has been *no* change in his personal circumstances.” Pet. ¶ 27 (emphasis original). Citing 8 U.S.C. § 1182(d)(5)(A), Petitioner faults the DHS Secretary’s decisionmaking and exercise of discretion. *Id.* ¶ 26. Count Two also asserts a Fifth Amendment Due Process claim, but under an alternative theory. Petitioner alleges that “Respondents did not return [him] to

⁴ The Petition inadvertently lists “Count Two” twice. The Government refers to the duplicative “Count Two” as “Count Three.”

custody ‘forthwith’” after his parole expired, but instead, “chose to detain him months later. . .” *Id.* ¶ 30. Because Petitioner was not immediately detained, the delay in his detention, he alleges, means that “he cannot be subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).” *Id.* ¶ 32. A violation of the Equal Protection Clause of the Fifth Amendment is claimed as the basis for Count Three, which asserts that “Respondents have illegally targeted [Petitioner] for detention because of his Afghan nationality, rather than any individualized determination that he poses a risk of flight or danger to the community.” *Id.* ¶ 35.

III. Argument

A. Legal Framework for Detention

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

1. Mandatory detention under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These

aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “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 removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “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); *see 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). Still, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Discretionary detention under 8 U.S.C. § 1226

Section 1226 more “generally governs the process of arresting and detaining . . . [noncitizens] pending their removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides the default rule that an alien “may be arrested and detained

pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). As the Supreme Court has explained, this provision “creates authority for *anyone’s* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions” *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).

Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or release the alien on “bond . . . or conditional parole.” *Id.* § 1226(a)(1)-(2). Once arrested under § 1226(a), release can occur “provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). An IJ’s decision to continue detaining an alien may be appealed to the Board of Immigration Appeals (“BIA”).⁵ 8 C.F.R. § 236.1(d)(3).

3. The administrative removal process

Removal proceedings are initiated with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 1003.14. Once an NTA is filed with the Immigration Court, the IJ “shall conduct proceedings for deciding the inadmissibility or deportability of an

⁵ The BIA is an appellate body within the Executive Office for Immigration Review. *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).

alien.” 8 U.S.C. § 1229a(a)(1). Such proceeding “shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States.” *Id.* § 1229a(a)(3).

An alien can apply for any form of relief from removal for which he is eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the Government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ’s denial of an application for relief from removal, an alien can file a petition for review (“PFR”) with the circuit court and seek a stay of removal. 8 U.S.C. § 1252(a)(5) (“[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . .”).

B. Petitioner’s Detention Comports with the INA and the Due Process Clause of the Fifth Amendment

1. Petitioner must be detained pursuant to 8 U.S.C. § 1225 pending the outcome of his removal proceedings

As noted above, § 1225—applicable to “applicants for admission,” that is, aliens present in the United States who have not be admitted—is the specific detention authority applicable to Petitioner. Under § 1225(a), an “applicant for admission” is defined as an “alien present in the United States who has not been admitted or who arrives in the United States.” Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—

is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a.)”); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted, making detention mandatory.

The present case is factually and legally distinct from the many recent cases in this District finding § 1225(b)(2) inapplicable. Here, by contrast, the record establishes that Petitioner in 2021 was subjected to inspection. He was “evacuated” from Afghanistan. Pet. ¶¶ 1, 18. Following his evacuation, Petitioner was screened “at the airport and on a military base after [his] arrival.” *Id.* ¶ 20. This “screening” took place “at or near Dulles, Virginia, on or about September 7, 2021,” i.e., Dulles International Airport. Ex. 3 at 1, I-862 Notice to Appear (Sept. 8, 2025). As a result, he received temporary parole into the United States at a port of entry. *See* U.S. CUSTOMS AND BORDER PROTECTION, “Port of Washington-Dulles, Virginia - 5401,” <https://www.cbp.gov/about/contact/ports/port-washington-dulles-virginia-5401> (last visited Dec. 12, 2025). Thus, Petitioner was initially examined as required under § 1225, and paroled for humanitarian purposes pursuant to § 1182(d)(5)(A), which he himself acknowledges. Pet. ¶¶ 20, 26.

The INA allowed Petitioner’s otherwise mandatory § 1225(b)(2) detention to be suspended, enabling his parole and travel into the United States subject, however, “to a reservation of rights by the Government that it may continue to treat [him] ‘as if stopped at the border.’” *Martinez v. Hyde*, 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020)).

This is permitted by the statute:

§ 212(d)(5)(A) of the INA empowers the Secretary with the discretion to “parole into the United States temporarily under such conditions as [s]he may prescribe.” 8 U.S.C. § 1182(d)(5)(A). But the Secretary’s parole authority, of course, is not limitless. The statute specifies that the Secretary’s decision to grant parole must be carried out “only on a case-by-case basis” and “for urgent humanitarian reasons or significant public benefit.” *Id.*

On the other hand, the clause describing the Secretary’s authority to terminate any grants of parole does not contain the same limiting language. Indeed, Congress allows the Secretary to terminate parole “when the purposes of such parole shall, in [her] opinion . . . have been served.” *Id.* When Congress uses limiting language – as it does in the antecedent clause – “we must give effect to, not nullify, Congress’ choice to include limiting language in some provisions but not others.” *Gallardo ex rel. Vassallo v. Marstiller*, 596 U.S. 420, 431 (2022). Giving every word effect, the statutory text thus reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants. The statutory text, therefore, favors an interpretation that the “case-by-case” requirement only limits the Secretary’s discretion to grant parole. *Id.*

See Doe v. Noem, 152 F.4th 272, 286 (1st Cir. 2025) (“the context of the statute . . . does not indicate that the Secretary must engage in individualized terminations of parole”). Such “immigration parole into the United States employs a legal fiction whereby non-citizens are physically permitted to enter the country but are nonetheless ‘treated,’ for legal purposes, ‘as if stopped at the border.’” *Hyde*, 2025 WL 2084238, at *3 (quoting *Thuraissigiam*, 591 U.S. at 139).

“In other words,” as the *Hyde* decision explains, “it [is] as if [a parolee] had never

entered the country at all.” *Id.* at *3. Applicants for admission who hover “on the threshold of initial entry”—like Petitioner—thus “stand[] on a different footing.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). For constitutional purposes, applicants for admission are treated “as if stopped at the border.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (quoting *Mezei* at 213). “[A]liens who petition for admission have no constitutional rights regarding their applications,” other than “such statutory rights as Congress grants.” *Augustin v. Sava*, 735 F.2d 32, 36 (2d. Cir. 1984).

ICE would have been within its rights to revoke Petitioner’s parole at any time and detain him under § 1225(b)(2) if it determined that “the purposes of such parole . . . have been served.” 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. § 212.5(e)(2)(i). Counts One and Two of the Petition make much of this argument, claiming that the DHS Secretary must determine that the purposes of parole have been served. Pet. ¶¶ 23-32. Yet in this regard Petitioner elides the specific facts of his case. Because Petitioner’s parole status *expired* as of September 6, 2025, such a showing was not required here. *See* Pet. ¶ 20; Ex. 1, I-94 Record of Admission (listing as an “Admit Until Date” September 6, 2025). No purpose of parole existed to be served because no parole status for Petitioner after that date existed. He was never admitted, and for the past several months, has not been paroled.

Petitioner’s parole instead automatically terminated pursuant to 8 C.F.R. § 212.5(e)(1)(ii):

Parole shall be automatically terminated without written notice . . . at the expiration of the time for which parole was authorized, and in [] case [of expired parole] the alien shall be processed in accordance with paragraph (e)(2) of this section except that no written notice shall be required.

Id. Paragraph (e)(2)(i) of § 212.5 does provide that “parole shall be terminated upon

written notice” in cases “upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. . .” Here though, the express terms of § 212.5(e)(1)(ii) establish that Petitioner’s expired parole terminated automatically without written notice and without any written notice being required. *Id.*⁶

Relatedly, the requirement to consider the accomplishment of the purpose for which parole was authorized, humanitarian reasons, or public benefit only applies to cases—unlike Petitioner’s—which are “not covered by paragraph (e)(1).” *Id.* § 212.5(e)(2)(i). The remaining notice-less “process[ing] in accordance with paragraph (e)(2)” of § 212.5 simply requires that any “further inspection or hearing [] be conducted under section 235 [*e.g.*, § 1225’s mandatory detention provision] or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed.” *Id.* § 212.5(e)(2)(i). In the event such an order cannot “be executed within a reasonable time, the alien shall again be released on parole unless . . . the public interest requires that the alien be continued in custody.” *Id.*

Parole “is not admission,” and “under section 1182(d)(5)(A) terminates. . . automatically when the time for which it was authorized expires.” *Rodrigues de Oliveira v. Joyce*, 2:25-cv-00291-LEW, 2025 WL 1826118, at *6 (D. Me. July 2, 2025) (citing 8 C.F.R. § 212.5(e)(1)-(2)); *see also Espinoza v. Kaiser*, 25-cv-1101, 2025 WL 2675785, at *7 (E.D. Cal. Sept. 18, 2025) (“212.5(e) requires written notice of the termination of parole *except . . . when the specified period of parole has expired*”) (emphasis added).

⁶ Regardless, § 212.5(e)(2)(i) provides that “[w]hen a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.” Here, such a charging document—the NTA—would suffice.

Petitioner falls into the automatic expiration category.

In sum, Petitioner is an expired § 1182(d)(5)(A) parolee who is legally detained pursuant to § 1225(b)(2). Petitioner fails to acknowledge that the expiration of his parole automatically rendered him detainable, just as if he had been encountered at a port of entry yesterday. This profound change in Petitioner’s personal circumstances supports mandatory detention pursuant to § 1225(b)(2), and comports with due process. *Contra* Pet. ¶¶ 26-28. There was no constitutionally cognizable “delay in detention”⁷ for the same reasons, because the termination of parole here was self-executing, rather than based on agency action or decisionmaking. *Contra* Pet. ¶¶ 29-32. As this Court recently held in an analogous case, “upon expiration of his parole, his status is restored to detention under [§ 1225(b)(2)].” *Chanaguano Caiza v. Scott*, 1:25-cv-00500-JAW, 2025 WL 3013081, at *7 (D. Me. Oct. 28, 2025).

2. To the extent 8 U.S.C. § 1226 is applied, Petitioner would be constitutionally subject to discretionary detention and receive adequate due process

Petitioner may argue that he is detained pursuant to 8 U.S.C. § 1226, which as detailed above, also allows for the detention of aliens for the purpose of removal proceedings. ICE submits that the detention authority instead resides under 8 U.S.C. § 1225, as discussed above. Even to the extent § 1226 were found to apply, however, such authority provides that an alien may be detained “pending a decision on whether [he] is to be removed from the United States.” *Id.* The provision “creates authority for anyone’s arrest or release under § 1226—and it gives [immigration authorities] broad discretion

⁷ Government counsel was unable to locate any caselaw concerning the notion that a failure of immigration authorities to “forthwith return” an alien *to custody* violates the alien’s due process rights. The alien’s liberty interest would presumably be in avoiding a return to custody.

as to both actions” *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).⁸ Under § 1226, too, Petitioner’s detention would therefore be authorized by statute and regulation, with no basis for the Court to order release.

The Supreme Court has repeatedly “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character”). Here, Petitioner is detained for the limited purpose of removal proceedings. If found to be detained under § 1226, he could seek a bond hearing to contest such detention.⁹ Under such a § 1226 scenario, per Supreme Court precedent, detention would not violate the Constitution. *See Wong Wing*, 163 U.S. at 235 (“detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid”). There is no dispute that Petitioner’s detention is not indefinite; it will end upon the conclusion of the removal proceedings. As another district court in this circuit recognized, a brief period of detention for the purpose of removal proceedings or to effectuate removal generally does not violate the Constitution. *See Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (recognizing that detention “for a period of less than three months’ time . . . does not amount to an unconstitutional duration”). To the extent a bond hearing is ordered, ICE

⁸ Moreover, “[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest and detain the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

⁹ Notable, too, is that even if an IJ disagrees with DHS’s position that Petitioner is detained under § 1225 at a bond hearing and finds jurisdiction under § 1226, the agency could invoke the automatic stay provision at 8 C.F.R. § 1003.19(i)(2).

submits that Petitioner should remain detained pending such a hearing, to allow the Government an opportunity to present evidence regarding danger and flight to the Immigration Court.

C. Petitioner’s Detention Also Comports with the Equal Protection Clause of the Fifth Amendment

As detailed above, Petitioner is an arriving alien whose parole expired months ago, and thus, was automatically subject to mandatory detention. The particular facts of his case are what drove the issuance of his underlying NTA—which was issued roughly two months before the statements cited in the Petition. *See* Pet. at p. 7, n.3 & n.4. As detailed above, the removal decision also reasonably coincides with highly concerning findings made by USCIS as to Petitioner’s fraudulent conduct, as well as his possible complicity in human rights abuses. Thus, at the outset, he has failed to plead a plausible violation of his rights under the Equal Protection Clause of the Fifth Amendment.

Even if this were not the case, Petitioner’s claim would fail. “The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion. . . that all aliens must be placed in a single homogeneous legal classification.” *Mathews v. Diaz*, 426 U.S. 67, 78 (1976). Nor can “[u]ndocumented aliens [] be treated as a suspect class,” given that “their presence in this country in violation of federal law is not a ‘constitutional irrelevancy.’” *Plyler v. Doe*, 457 U.S. 202, 223 (1982). Alienage-based equal protection challenges are thus subject to rational basis review. *Mathews*, 426 U.S. at 78-84 (“statutory discrimination” between classes of aliens “allowing benefits to some aliens but not to others” is permissible).

Rational basis review “employs a relatively relaxed standard,” once which acknowledges that “[p]erfection in making the necessary classifications is neither

possible nor necessary.” *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976). Government classifications should be upheld so long as there is “any reasonably conceivable state of facts that could provide a rational basis for the classification.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993). Where the Government action is staked on “plausible reasons,” a court’s “inquiry is at an end.” *Id.* at 313-314 (quoting *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980)).

There are plausible reasons for immigration authorities to apply increased scrutiny to Afghan nationals. It is reasonably conceivable, for example, that Afghan citizens who have lived through the past several decades of perpetual armed conflict in their nation may have engaged in activities warranting enforcement by immigration authorities. Direct military training and experience, too—although cited by Petitioner as a positive factor—may need to be assessed for security and intelligence risks, as well as for past human rights abuses. The inhospitable environment of Afghanistan may also provide a motive for its nationals to provide misleading information to forestall enforcement efforts by U.S. immigration authorities to return Afghan nationals to their country of origin. *See* U.S. DEPT. OF STATE, “Afghanistan Travel Advisory,” <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/afghanista-n-advisory.html> (last visited Dec. 12, 2025) (citing current conditions of “civil unrest, crime, terrorism, risk of wrongful detention, kidnapping, and limited health facilities”). Indeed, Petitioner’s own case illustrates these concerns. While all of these points may be subject to genuine and thoughtful debate, rational basis review cedes such considerations to political rather than judicial processes. *See Family Planning Ass’n of Maine v. Kennedy*, 1:25-cv-00364-LEW, 2025 WL 2591542, at *1 (D. Me. Sept. 8, 2025). Petitioner’s equal protection claims provide no basis for habeas corpus relief.

IV. Conclusion

Petitioner is not entitled to a writ of habeas corpus. His due process and equal protection rights under the Fifth Amendment have not been violated. Ordinarily, “once passed through our gates, even illegally,” noncitizens “may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Here, however, Petitioner occupies a unique place—as a “[n]on-citizen[] fictively paroled into the United States [he is] in a fundamentally different and less protected position than ‘those who are within the United States after an entry, irrespective of its legality.’” *Martinez v. Hyde*, 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). The Government respectfully submits that the Court dispose of and dismiss this matter “as law and justice require.” 28 U.S.C. § 2243. To the extent not disposed of by dismissal, the Government will be prepared for and available to attend any hearings scheduled. *Id.* At such hearing, the Government may submit additional evidence and arguments bearing on Petitioner’s claims.

Dated: December 12, 2025
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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