

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JOSE NICACIO FUENTES ARAUJO

PETITIONER

v.

Civil Action No. 5:25-cv-00158-DCB-BWR

**RAFAEL VERGARA, Warden,
Adams County Correctional Center, et al.**

RESPONDENT

**RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER
28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Rafael Vergara, Warden of Adams County Correctional Center (“Respondent”), by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney, submits this Response in Opposition to the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Complaint for Injunctive and Declaratory Relief filed by Jose Nicacio Fuentes Araujo (“Petitioner”). *See* ECF No. 1. As set forth herein, the Petitioner is not entitled to the relief sought and the habeas petition should be denied.

Relevant Facts

Petitioner is a native and citizen of Venezuela. *See* ECF No. 1, *Petition*, p. 4, *see also* Exhibit A, *Notice to Appear*. He illegally entered the United States on or about August 17, 2023. *See* Exhibit A, *Petition*, p.4. On October 25, 2025, Petitioner was detained by immigration officials at or near Port Canaveral, Florida. *Id.* at p.2. He is being housed at the Adams County Correctional Center in Natchez, Mississippi. *See* ECF No. 1, *Petition*, p. 7, *see also* Exhibit A, *Notice to Appear*. Also on October 25, 2025, an immigration officer served the Petitioner a Notice to Appear (“NTA”) for

removal proceedings based on violations of Section 212(a)(7)(A)(i)(I)¹ of the INA. *See* Exhibit A, *Notice to Appear*. Based on the NTA, the Petitioner was scheduled to appear before an Immigration Judge (“IJ”) on December 2, 2025, for a custody redetermination (bond) hearing pursuant to 8 C.F.R. § 1236. *Id.* Ultimately, the IJ denied the Petitioner’s request for bond, finding it lacked jurisdiction because the Petitioner is an applicant for admission subject to the “custody authority” of the Department of Homeland Security (“DHS”). *See* Exhibit B, *Order of the Immigration Judge*. The Petitioner had a master hearing on January 6, 2026, wherein he filed an application for relief. *See* Exhibit C, *Notice of Internet-Based Hearing*. DHS subsequently filed a motion to pretermitt the application for relief and the IJ scheduled the case for a merits² hearing to be held on January 21, 2026. *See* Exhibit D, *Notice of Internet-Based Hearing*.

Currently, the Petitioner is in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act (“INA”) and Section 1229a of Title 8 of the United States Code. Despite being in removal proceedings, he filed the instant petition on December 15, 2025, alleging the Petitioner is subject to the “discretionary detention” provisions of Section 1226(a) rather than the “mandatory detention” provisions of Section 1225(b). *See* ECF No. 1, *Petition*, p. 2. This argument has no merit and is contrary to law. Moreover, release would not provide him any lawful status in the United States and would produce no net gain. For these reasons and those that follow, this Court should deny this habeas petition without the need for an evidentiary hearing.

¹ Any alien 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 required by the Act, or who is not in possession of a valid unexpired passport, or other suitable document, or identity and nationality document if such document is required by regulations issued by the Attorney General pursuant to Section 211(a) of the Act.

² During the merits hearing, the IJ is expected to hear DHS’s motion to pretermitt the application for relief, and, if necessary, conduct an inquiry into the merits of the Petitioner’s application for relief.

Legal Framework

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who “entered” the country after successfully evading inspection were entitled to seek bond.³ See *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228*4 (S.D. Cal. Sept. 24, 2025), (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024)).

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal. Among other things, the law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928.

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. §

³ At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025); see 8 U.S.C. § 1225(a)-(b) (1995); 8 U.S.C. § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the key factor would be whether the alien has been lawfully admitted. *Hing Sum*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223. IIRIRA effected these changes through several provisions codified in Section 1225 and 1226 of Title 8:

I. Section 1225(a)

Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. It unambiguously provides:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). The “or” in this statute is disjunctive and indicates that these are two different types of aliens both of which are considered an applicant for admission: (1) present and not admitted, or (2) arriving in the U.S. Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an “applicant for admission”.

II. Section 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. It states:

All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

8 U.S.C. § 1225(a)(3). The immigration officer’s inspection is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, referred to removal proceedings. The IIRIRA divided removal proceedings into two tracks: (1) expedited removal, and (2) non-expedited

“Section 240” proceedings, and it mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to applicants for admission falling under the specifications of subsection (b)(1), the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien being considered for expedited removal or who has been ordered removed “shall be detained pending determination and removal.” *See* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is broader than (b)(1), serving as a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The key distinction between sections (b)(1) and (b)(2) is that (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under Section 1229a. Both sections, however, require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of Section 1229a removal proceedings. In particular, Section 1225(b)(2) requires detention for those aliens with pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), 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 a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added)⁴; *see also* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While an applicant is subject to the mandatory detention provisions of Section 1225(b), the DHS retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). The INA however remains clear that even “such parole of such alien shall not be regarded as an admission of the alien” and when the purpose of parole, in the discretion of DHS, has been served, the alien should be returned to custody and treated as any other applicant for admission. *Id.*

III. Section 1226 – Apprehension, Detention and Release

Section 1226 applies to “aliens”, which means any person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). “Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ §1227(a).” *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines “classes of deportable aliens” among those already “in and admitted to the United States”) (emphasis added)). Generally, Section 1226 “governs the process

⁴ Exceptions to Subsection (b)(2) are: (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

of arresting and detaining that group of aliens pending their removal.”⁵ *Id.* The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority. The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.*, see 8 U.S.C. § 1226(a)(1) (DHS “may [however] continue to detain the arrested” alien during the pendency of removal proceedings).

Argument

In his prayer for relief, Petitioner alleges his arrest, and detention is in violation of (1) the INA, (2) the Due Process Clause, (3) the Administrative Procedures Act, (4) the Fifth Amendment’s guarantee of Equal Protection, (5) the Suspension Clause, and (6) the *Accardi* doctrine. ECF No. 1, *Petition*, pgs. 12-23. The Petition makes no mention of the authority under which the Court can grant such relief.

I. Petitioner’s Claims Lack Jurisdiction Under Rule 12(b)(1)

A. 8 U.S.C. § 1252(g) bars review of Petitioner’s claims.

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) (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

⁵ IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). See 8 U.S.C. § 1226.

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 his removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review . . . [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“[T]he decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings . . . Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). As such, judicial review of the Petitioner’s claims is barred by § 1252(g).

B. 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claims.

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999) (“*AADC*”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.* at 483; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT),

2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . 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, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction).

Critically, “[S]ection 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals and can be exercised only after the alien has exhausted administrative remedies.”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031-32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act

of 2005 amended the [IIRIRA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

Essentially, subsections (a)(5) and (b)(9) divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294-95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the decision and action to detain him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove him from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner’s claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293-94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294-95. In this case, the Petitioner *does* challenge the government’s decision to detain him in the first place. *See, e.g., ECF No. 1, Petition*, pg. 4. Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain him, such creative framing does not evade the preclusive effect of § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the

government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

II. Petitioner Failed to Exhaust Administrative Remedies.

A. The agency decision denying release is not administratively final.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. Normally, a habeas petitioner must exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “serves numerous purposes, including protecting the authority of administrative agencies, limiting interference in agency affairs, and promoting judicial efficiency by resolving potential issues and developing the factual record.” *Beharry v. Ashcroft*, 329 F.3d 51, 56 (2d Cir. 2003), as amended (July 24, 2003) (Sotomayor, J.).

Here, Petitioner admits he has not availed himself of the administrative remedies available to him. *See* ECF No. 1, *Petition*, p. 9. An IJ entered an order denying release under Section 235(b) of the INA on December 2, 2025. Since that time, the Petitioner filed an application for relief during his master hearing and DHS moved to pretermitt the application for relief. *See* Exhibit C, *Notice of Internet-Based Hearing*. A merits hearing has been scheduled for January 21, 2026. *See* Exhibit D, *Notice of Internet-Based Hearing*. At this time, no final administrative bond order exists for the Petitioner.

B. Petitioner Lacks Standing to Bring Administrative Procedures Act and *Accardi* Claims.

The Administrative Procedures Act (“APA”) is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (internal quotation marks and citation omitted). As noted by Justice

Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). Because there is no final administrative bond order, the Petitioner’s APA claim is independently barred by the limitation in 5 U.S.C. § 704. Likewise, the Petitioner’s *Accardi*⁶ claims are also barred. *See C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 224 (D.D.C. 2020) (“*Accardi* claims are nonetheless barred because they are not based on final agency action . . .”).

III. The Petitioner is Properly Detained.

A. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive 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.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS’s discretion. 583 U.S. at 300. The Supreme Court specifically emphasized that “[r]egardless

⁶ *Accardi* “stand[s] for the proposition that agencies may not violate their own rules and regulations to the prejudice of others.” *Id.* at 112. However, it “enunciates principles of federal administrative law rather than of constitutional law.” *Id.* Put differently, a violation of the doctrine is not necessarily a constitutional violation of due process. *Id.*

of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . .” *Id.* at 288. The Court further emphasized that “[s]uch parole . . . shall not be regarded as an admission of the alien. *Id.* Said differently, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked”), 1001.1(q) (same). Therefore, regardless of whether an alien has been paroled into the United States under 8 U.S.C. § 1182(d)(5), he has not gained a “foothold in the United State[s].” *see Leng May Ma v. Barber*, 357 U.S. 185 (1958). Following parole, the alien “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), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

B. The Plain Language of Section 1225(b)(2) Mandates Detention.

“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 expressly provides “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 a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) “present in the United States who has not been admitted” to be an “applicant for admission.” *Id.* Thus, under its plain terms, all unadmitted foreign nationals in the United States are “applicants for admission,” regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. While this may seem counterintuitive, “[w]hen a

statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018).

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. [POE]⁷ 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 [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), who was temporarily released on parole, and currently in removal proceedings under 8 U.S.C. § 1229a. He is subsequently subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1) or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)"). Immigration officers have discretion to apply expedited removal under 8 U.S.C. §

⁷ An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry ["POE"] . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

1225(b)(1) or to initiate removal proceedings before an IJ under 8 U.S.C. § 1229a. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

C. Section 1226 Does Not Impact the Detention Authority for Applicants for Admission.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226, 1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 proceedings under [8 U.S.C. § 1229a],” *id.* § 1225(b)(2)(A).⁸ As the Supreme Court explained, 8 U.S.C. § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303.⁹

⁸ The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). “[I]t is a commonplace of statutory construction that the specific governs the general . . .” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is “most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission” and in order to “eliminate the contradiction, the specific provision is construed as an exception to the general one”). Here, 8 U.S.C. § 1225(b)(2)(A) “does not negate [8 U.S.C. § 1226(a)] entirely,” which still applies to admitted aliens who are deportable, “but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

⁹ Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority “to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation” or “to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . .” *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests). While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond if the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2). Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020).

As the Supreme Court in *Barton* also noted, “redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” 590 U.S. at 239. “Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text . . .” *Id.* The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* 8 U.S.C. § 1226(c)(1)(E), merely reflects a “congressional effort to be doubly sure” that certain aliens are detained, *Barton*, 590 U.S. at 239.

processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

IV. Petitioner’s argument that § 1226, rather than § 1225, should apply to his detention is flawed.

The crux of this dispute is one of statutory interpretation. The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in Section 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under Section 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. History supports the result required by the plain language of the statute itself. Indeed, other district courts, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *See, e.g., Oliveira v. Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an “applicant for admission” subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval v. Acuna*, et al No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an “applicant for admission” subject to mandatory detention under §1225(b)(2); *Rene Garibay-Robledo v. Noem*, 25-

cv-177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025) (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an “applicant for admission” subject to mandatory detention under §1225(b)(2)); *Lopez v. Trump*, 25-cv-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Alves de Andrade v. Patterson*, Case No. 6:25-cv-1695, ECF No. 9 at pp. 13-14 (W.D. La. Nov. 21, 2025) (the legislative history makes clear that lawfully admitted aliens should not be worse off than those who crossed the border unlawfully).

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. See 8 U.S.C. § 1225(b)(2). And for good reason. Detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. See *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch could give

effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531. Congress’s mandate is supported by eminently reasonable grounds. After all, where, as here, “the words of a statute are unambiguous, this first step of the interpretive inquiry [*i.e.*, construing the statutory text] is [the court’s] last.” *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (citation omitted).

Notably, a district court in this Circuit recently denied an injunction and request for a bond hearing under Section 1226, noting the very real distinction between an “arriving alien” and an “applicant for admission” with respect to the application of § 1225(b) and its mandatory detention requirement. *See Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478, at *2 (N.D. Tex. Oct. 24, 2025). As that Court stated:

To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as “[a]n alien . . . who arrives in the United States.” But the same provision also defines an applicant for admission as “[a]n alien present in the United States who has not been admitted.” *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

Id. The court conducted a review of legislative history and further noted that by defining “applicants for admission” broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *6-7.

Accordingly, the plain language of Section 1225(b)(2), requires DHS to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States. This Court should follow the reasoning in the *Oliveira*, *Sandoval*, *Kum*¹⁰, and the reasoning in other sister courts¹¹, and find that Petitioner is properly detained under § 1225(b)(2) and subject to mandatory detention as an “applicant for admission” during the pendency of his removal proceedings under § 1229a.

¹⁰ *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025).

¹¹ *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025); and *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025).

V. Petitioner's detention does not violate Due Process or Equal Protection Guarantees.

As previously mentioned, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States, like Petitioner. See 8 U.S.C. § 1225(a)(1). And Congress directed that alien, like Petitioner, shall be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they have crossed borders and traveled in violation of United States law (by definition). That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has also recognized this profound interest. See *Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). And with this power to remove aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *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.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings.”).

In another immigration context involving aliens already ordered removed and awaiting their removal, the Supreme Court has explained that detaining these aliens less than six months is presumed

constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of the *Jennings* court, stating “we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings.” *Jennings*, at 296-97. The Supreme Court explained why the *Zadvydas* opinion does not provide authority to graft a time limit into the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word “shall” instead of “may”, specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

In *Demore*, as is the case here, the alien argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. 538 U.S. at 513. The Supreme Court rejected the argument and explained that Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. It emphasized the constitutionality of the “definite termination point” of the detention, which was the length of the removal proceedings. *Id.* at 512. The *Demore* Court held “[d]etention during removal proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. Considering Congress’s interest in dealing with illegal immigration by keeping aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns. *Id.* at 512., *generally*.

Likewise, Petitioner’s detention does not violate due process, as his current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty “sufficiently outrageous” required to establish a substantive due process claim. *See, generally, Reed*

v. Goertz, 598 U.S. 230, 236 (2023). The Petitioner is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his removability from the United States. Petitioner's detention under Section 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal or removal proceedings. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. *See Kum v. Ross, et al.*, 2025 WL 3113636 *2 (W.D. La. Oct. 22, 2025) (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional), *report and recommendation adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025).

Moreover, Petitioner's detention classification is not discriminatory or arbitrary. As stated herein, Petitioner is an applicant for admission dealt with in the same manner as that of any other applicants for admission to the United States," 8 U.S.C. § 1182(d)(5)(A), requiring that he remain detained pursuant to 8 U.S.C. § 1225(b)(2).

Conclusion

For the reasons explained above, Petitioner's petition for writ of habeas corpus and claims for equivalent injunctive relief should be denied and Petitioner's detention should remain undisturbed, as he is subject to mandatory detention for the duration of his removal proceedings.

Date: January 8, 2026

Respectfully submitted,

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