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9

10 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

11 Ali Mohammadi,

12 Petitioner,

13 v.

14 KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
15 Security; TODD LYONS, in his official
capacity as Acting Director of Immigration and
16 Customs Enforcement; THOMAS E.
FREELEY, in his official capacity as ICE Field
17 Officer Director; JOHN DOE in his official
capacity as the warden of the Henderson
18 Detention Facility; PAMELA BONDI, in her
official capacity as the United States Attorney
19 General; The Executive Office for Immigration
Review United States Immigration and
20 Customs Enforcement,

21 Respondents.
22

Case No. 2:26-cv-00032-GMN-EJY

**Respondents' Response to Petition for
Writ of Habeas Corpus, ECF No. 1**

23 This case presents materially different factual and legal circumstances than those
24 previously addressed by courts in this District in related immigration matters, which have
25 largely involved noncitizens apprehended within the interior of the United States, rather
26 than arriving aliens encountered at a port of entry and detained pursuant to 8 U.S.C. §
27 1225. Petitioner, a native and citizen of Afghanistan, presented himself at the Calexico,
28 California Port of Entry, where DHS issued him a Notice to Appear classifying him as an

1 “arriving alien” and charging him as inadmissible for lack of valid entry documents.
2 Petitioner was provided a hearing date before an Immigration Judge of May 17, 2028.

3 Although DHS granted Petitioner discretionary parole for a one-year period to
4 permit his entry into the United States, that parole expired by its own terms. On December
5 29, 2025, following the expiration of parole, Petitioner was taken into custody during a
6 check-in with immigration authorities. Petitioner now seeks habeas relief, asking this Court
7 to order an immediate bond hearing before an Immigration Judge.

8 The Court lacks authority to grant that relief. Because Petitioner is properly
9 classified and detained as an arriving alien pursuant to 8 U.S.C. § 1225(b)(2), he is not
10 statutorily entitled to a bond hearing before an Immigration Judge, and this Court cannot
11 compel the Immigration Court to provide relief that Congress has expressly foreclosed. As
12 explained below, the statutory framework governing arriving aliens forecloses the relief
13 Petitioner seeks as a matter of law.

14 **I. Factual and Legal Background**

15 Petitioner Ali Mohammadi (“Petitioner”) is a native and citizen of Afghanistan.
16 ECF No. 1 at ¶1; *see* Exhibit A at 1. Petitioner is currently detained at the Henderson
17 Detention Center in Henderson, Nevada. ECF No. 1 at ¶15; *see* Exhibit B. On December
18 15, 2024, Petitioner presented himself at the Calexico, California Port of Entry, where
19 DHS issued him a Notice to Appear classifying him as an “arriving alien” and charging
20 him as inadmissible for lack of valid entry documents pursuant to 8 U.S.C. § 1182(a)(7). *See*
21 Exhibit A at 1, 4. Petitioner was provided a hearing date before an Immigration Judge of
22 May 17, 2028. *Id.* at 1. Petitioner was granted parole for a one-year period and was
23 permitted to enter the United States. *See* Exhibit C. On December 29, 2025, following the
24 expiration of the one-year period of the parole (*see* Exhibit C), he was detained at a check-in
25 with immigration authorities. *See* Exhibit D. Petitioner has a Master Calendar hearing with
26 the Immigration Judge scheduled for February 9, 2026 in his removal proceeding. *See*
27 Exhibit E. It does not appear that Petitioner has sought a bond hearing with an
28 Immigration Judge.

II. Legal Standards

A. 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); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025).

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,” they are detained until removed from the United States. *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 Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”); *Matter of 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. §

1 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
2 *Jennings*, 583 U.S. at 299). However, the Department of Homeland Security (DHS) has the
3 sole discretionary authority to temporarily release on parole “any alien applying for
4 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
5 or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806
6 (2022).

7 **B. Detention Under 8 U.S.C. § 1226(a)**

8 Section 1226(a) provides that “[o]n a warrant issued by the Attorney General, an
9 alien may be arrested and detained pending a decision on whether the alien is to be
10 removed from the United States.” Under § 1226(a), the government may detain an alien
11 during his removal proceedings, release him on bond, or release him on conditional parole.
12 By regulation, immigration officers can release aliens upon demonstrating that the alien
13 “would not pose a danger to property or persons” and “is likely to appear for any future
14 proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination
15 (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. See 8
16 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

17 At a custody redetermination, the IJ may continue detention or release the alien on
18 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
19 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
20 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
21 consider, an alien “who presents a danger to persons or property should not be released
22 during the pendency of removal proceedings.” *Id.* at 38.

23 **III. Argument**

24 **A. Petitioner is Properly Categorized as an Arriving Alien Subject to Mandatory** 25 **Detention Under § 1225(b)(2)(A)**

26 Any individual who “arrives in the United States,” or “is present” in this country
27 but “has not been admitted,” is treated as “an applicant for admission.” 8 U.S.C. §
28 1225(a)(1). Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2).

1 Both provisions require that any applicant for admission remain detained until their asylum
2 application is fully adjudicated or until removal proceedings conclude. *Id.* §
3 1225(b)(1)(B)(ii); *Id.* § 1225(b)(2)(A); *see also Jennings v. Rodriguez*, 583 U.S. 281, 297, 138 S.
4 Ct. 830, 200 L. Ed. 2d 122 (2018); *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218-
5 19 (for “those aliens who are seeking admission and who an immigration officer has
6 determined are ‘not clearly and beyond a doubt entitled to be admitted’ . . . the INA
7 explicitly requires that this third ‘catchall’ category of applicants for admission be
8 mandatorily detained for the duration of their immigration proceedings”); *Matter of Li*, 29 I.
9 & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a
10 warrant while arriving in the United States, whether or not at a port of entry, and
11 subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8
12 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a)
13 of the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is
14 present in the United States without being admitted.

15 The district court’s decision in *Florida v. United States* is instructive here. There, the
16 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission
17 throughout removal proceedings, rejecting the assertion that DHS has discretion to choose
18 to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp.
19 3d at 1275. The court held that such discretion “would render mandatory detention under §
20 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border
21 crossers would make little sense if DHS retained discretion to apply § 1226(a) and release
22 illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore v. Kim*,
23 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale failure” by
24 the federal government motivated the 1996 amendments to the INA. *Florida*, 660 F. Supp.
25 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. at 516, in which the
26 Attorney General explained “section [1225] (under which detention is mandatory) and
27 section [1226(a)] (under which detention is permissive) can be reconciled only if they apply
28 to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

1 When the plain text of a statute is clear, “that meaning is controlling” and courts
2 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842,
3 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
4 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir.
5 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
6 attempting to lawfully enter the United States were in a worse position than persons who
7 had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en
8 banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see*
9 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at
10 225 (1996)). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’
11 under which illegal aliens who have entered the United States without inspection gain
12 equities and privileges in immigration proceedings that are not available to aliens who
13 present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,
14 at 225). The Court should reject Petitioner’s interpretation because it would put aliens who
15 “crossed the border unlawfully” in a better position than those “who present themselves for
16 inspection at a port of entry.” *Id.* Aliens who presented at a port of entry would be subject to
17 mandatory detention under § 1225, but those who crossed illegally would be eligible for a
18 bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 (“The House
19 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
20 statutory scheme that provided aliens who entered the United States without inspection
21 more procedural and substantive rights that those who presented themselves to authorities
22 for inspection.”).

23 In addition, on September 24, 2025, the Court in *Chavez v. Noem*, denied a TRO after
24 finding that Petitioners who do not contest that they are “aliens present in the United States
25 who have not been admitted.” *Chavez*, 2025 WL 2730228. “By the plain language of §
26 1225(a)(1), then Petitioners are applicants for admission and thus subject to the mandatory
27 detention provision of applicants for admission under § 1225(b)(2)” *Id.* Such a reading of the
28 statute comports with Congress’ addition of §1225(a)(1) by IIRIRA in 1996. Prior to

1 IIRIRA, an “anomaly” existed “whereby immigrants who were attempting to lawfully enter
2 the United States were in a worse position than persons who had crossed the border
3 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1)
4 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their
5 physical presence in the country, are placed on equal footing in removal proceedings under
6 the INA — in the position of an ‘applicant for admission.’” *Id.* As the Ninth Circuit did
7 recently in *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024), we thus also
8 “refuse to interpret the INA in a way that would in effect repeal that statutory fix” intended
9 by Congress in enacting IIRIRA. *Chavez*, at *4.

10 Applying these principles here, Petitioner is properly categorized as an arriving alien
11 and an applicant for admission subject to mandatory detention under 8 U.S.C. §
12 1225(b)(2)(A). Petitioner presented himself at a port of entry and was inspected by DHS.
13 Because he was not admitted into the United States, he remained, by operation of statute,
14 an “applicant for admission” within the meaning of § 1225(a)(1). His subsequent physical
15 presence in the United States pursuant to a temporary grant of parole did not alter that
16 legal classification. *See* Section III.B., below.

17 Accordingly, Petitioner falls squarely within the class of noncitizens for whom
18 detention is mandatory during the pendency of removal proceedings. *See Jennings v.*
19 *Rodriguez*, 583 U.S. at 297. DHS therefore lacked discretion to place Petitioner in custody
20 under § 1226(a) or to afford him eligibility for bond. To hold otherwise would collapse the
21 statutory distinction Congress drew between arriving aliens and noncitizens encountered
22 within the interior and would render § 1225(b)’s mandatory detention provision a nullity.
23 *See Florida v. United States*, 660 F. Supp. 3d at 1275. Because Petitioner is an arriving alien
24 who has not been admitted, his detention is governed by § 1225(b)(2)(A), and he is
25 ineligible for bond as a matter of law.

26 **B. Petitioners Grant of Humanitarian Parole Did Not Confer Lawful Status**

27 Petitioner’s argument that his parole renders him no longer an “arriving alien”
28 subject to 8 U.S.C. § 1225(b) (ECF No. 1 at 7) is foreclosed by the text of the INA and

1 settled precedent. DHS may, in its discretion, parole an applicant for admission “into the
2 United States temporarily ... for urgent humanitarian reasons or significant public benefit.”
3 8 U.S.C. § 1182(d)(5)(A). Congress made clear, however, that parole does not constitute an
4 admission into the United States and does not alter the individual’s legal status as an
5 applicant for admission. To the contrary, the statute expressly provides that “such parole of
6 such alien shall not be regarded as an admission of the alien,” and that upon the expiration
7 or termination of parole, “the alien shall forthwith return or be returned to the custody
8 from which he was paroled and thereafter his case shall continue to be dealt with in the
9 same manner as that of any other applicant for admission to the United States.” *Id.*

10 Courts have consistently recognized that parole under § 1182(d)(5)(A) operates as a
11 legal fiction: it permits a noncitizen to be physically present in the United States while
12 remaining, as a matter of law, at the border for purposes of admission and detention. *See*
13 *Rodriguez v. Bondi*, No. 1:25-cv-00791-AJT-WBP, 2025 U.S. Dist. LEXIS 172450, at *4–5
14 (E.D. Va. June 24, 2025) (explaining that parole “shall not be regarded as an admission”
15 and that upon expiration the noncitizen is returned to custody as an applicant for
16 admission); *Martinez v. Hyde*, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (parole
17 “employs a legal fiction whereby non-citizens are physically permitted to enter the country
18 but are nonetheless treated, for legal purposes, as if stopped at the border”) (quoting *DHS v.*
19 *Thuraissigiam*, 591 U.S. 103, 139 (2020)). A noncitizen paroled under § 1182(d)(5)(A)
20 therefore remains an applicant for admission subject to the inspection, admission, and
21 detention framework of § 1225. *See* 8 U.S.C. § 1182(d)(5)(A).

22 Here, Petitioner was encountered at a port of entry and classified as an arriving
23 alien. DHS’s discretionary decision to parole him temporarily for a defined period did not
24 convert his legal status into that of a noncitizen “admitted” into the United States, nor did
25 it reclassify him into the § 1226 detention scheme applicable to individuals apprehended
26 within the interior. By operation of statute, Petitioner remained an applicant for admission
27 throughout the parole period. When his parole expired, he was lawfully returned to
28

1 custody to continue being processed “in the same manner as that of any other applicant for
2 admission.” 8 U.S.C. § 1182(d)(5)(A).

3 **C. Petitioner’s Temporary Detention Does Not Offend Due Process**

4 As mentioned above, Congress broadly crafted “applicants for admission” to include
5 arriving aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1).

6 And Congress directed aliens like the Petitioner to be detained during their removal
7 proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§
8 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain
9 proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain
10 undocumented aliens during removal proceedings, which is the prerogative of the legislative
11 branch serving the interest of the government and the United States.

12 The Supreme Court has recognized this profound interest. *Shaughnessy v. United*
13 *States ex rel. Mezei*, 345 U.S. 206, 210 (“Courts have long recognized the power to expel or
14 exclude aliens as a fundamental sovereign attribute exercised by the Government’s political
15 departments largely immune from judicial control.”). And with this power to remove
16 aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability
17 to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952),
18 (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United*
19 *States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those
20 accused could not be held in custody pending the inquiry into their true character, and
21 while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
22 (“Detention during removal proceedings is a constitutionally permissible part of that
23 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
24 detain some classes of aliens during the course of certain immigration proceedings.
25 Detention during those proceedings gives immigration officials time to determine an alien’s
26 status without running the risk of the alien’s either absconding or engaging in criminal
27 activity before a final decision can be made.”).

1 In another immigration context (aliens already ordered removed awaiting their
2 removal under § 1231(a)), the Supreme Court has explained that detaining these aliens less
3 than six months is presumed constitutional. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But
4 even this presumptive constitutional limit has been subsequently distinguished as perhaps
5 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
6 explained Congress was justified in detaining aliens during the entire course of their removal
7 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
8 similar to undocumented aliens like Petitioner, Congress provided for the detention of
9 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
10 emphasized the constitutionality of the “definite termination point” of the detention, which
11 was the length of the removal proceedings.¹ *Id.* at 512.² In light of Congress’s interest in
12 dealing with illegal immigration by keeping specified aliens in detention pending the
13 removal period, the Supreme Court dispensed of any Due Process concerns without
14 engaging in the “*Mathews v. Eldridge* test” (*See id. generally.*). Congress simply made the
15 decision to detain him pending removal which is a “constitutionally permissible part of that
16 process.” *See Demore*, 538 U.S. at 531.

17 Likewise, in the present case, Petitioner’s brief period of detention pending the
18 resolution of his removal proceedings does not violate the Due Process Clause. Petitioner
19 has been detained for less than two months while his immigration case proceeds. But even
20 so, the removal proceedings “have a definite termination point.” Moreover, although
21 Petitioner has not requested a bond hearing, if he were to do so, the Immigration Court
22
23

24 ¹ “In contrast, because the statutory provision at issue in this case governs detention of deportable
25 criminal aliens *pending their removal proceedings*, the detention necessarily serves the purpose of
26 preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of
27 detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially permanent,’ *id.*, at 690–691, 121 S.Ct.
2491, the record shows that § 1226(c) detention not only has a definite termination point, but lasts,
in the majority of cases, for less than the 90 days the Court considered presumptively valid in
Zadvydas.”

28 ² In 2018, the Court again highlighted the significance of a “definite termination point” for detention
of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 would schedule and conduct such a hearing in the ordinary course, consistent with
2 applicable law and procedure.

3 **IV. Conclusion**

4 For the foregoing reasons, the Petition should be denied. Petitioner is an arriving
5 alien who presented at a port of entry, was not admitted into the United States, and is
6 therefore an applicant for admission subject to mandatory detention under 8 U.S.C. §
7 1225(b)(2)(A). DHS's discretionary grant of temporary humanitarian parole did not alter
8 Petitioner's legal status or convert his detention into one governed by 8 U.S.C. § 1226(a).
9 Because Congress has expressly foreclosed bond eligibility for arriving aliens detained under
10 § 1225(b), this Court lacks authority to order a bond hearing before an Immigration Judge.

11 Nor does Petitioner's brief period of detention pending the resolution of his removal
12 proceedings violate due process. His detention is expressly authorized by statute, is tethered
13 to ongoing removal proceedings with a definite endpoint, and falls well within the bounds of
14 constitutionally permissible immigration detention recognized by the Supreme Court.

15 Accordingly, Federal Respondents respectfully request that the Court deny the
16 Petition for Writ of Habeas Corpus and grant such other and further relief as the Court
17 deems just and proper.

18 Respectfully submitted this 3rd day of February, 2026.

19
20 TODD BLANCHE
21 Deputy Attorney General of the United States
22 SIGAL CHATTAH
23 First Assistant United States Attorney

24 /s/ Summer A. Johnson
25 SUMMER A. JOHNSON
26 Assistant United States Attorneys
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- Exhibit A – Notice to Appear, dated December 15, 2024
- Exhibit B – Detainee Locator results for Ali Mohammadi
- Exhibit C – Proof of I-94
- Exhibit D – Record of Deportable Inadmissible Alien, dated December 29, 2025
- Exhibit E – EOIR Automated Case Information for Ali Mohammadi