IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SERGEI ALEKSEEV	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 2:26-cv-462
	:	
PHILADELPHIA FEDERAL DETENTION CENTER, ET AL.,	:	
	:	
Respondents.	:	

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

Petitioner has filed a petition for writ of habeas corpus and motion for a temporary restraining order, challenging the authority of the Secretary of the U.S. Department of Homeland Security (DHS) to detain him under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2), after his discretionary parole into the United States expired. Petitioner is an "arriving alien" as defined under 8 U.S.C. § 1225(a)(1) and 8 C.F.R. § 1.2 and is thus, subject to mandatory detention under the plain language of § 1225(b)(2).

This petition is distinguishable from the vast majority of petitions recently considered by this Court involving "applicants for admission" in the wake of the Board of Immigration Appeals' (BIA) decision in *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), which, despite Petitioner's representations, is not implicated here.[1] *See e.g., Cantu-Cortes v. O'Neill, et al.*, No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); Anirudh *v. McShane, et al.*, No. 25-cv-6458 (E.D. Pa. Dec. 8, 2025) (Bartle, J.); *Juarez Velazquez v. O'Neill, et al.*, No. 25-cv-6191 (E.D. Pa. Dec. 3, 2025) (Henry, J.). **Specifically, as an "arriving alien,"—which constitutes a distinct category of "applicants for admission" than the one considered by the BIA in *Hurtado*—Petitioner is subject to mandatory detention under § 1225(b)(2). *See* 8 C.F.R. 235.3(c)(1). The cases cited above did not involve individuals like Petitioner who were charged as inadmissible "arriving aliens" upon entry to the United States.** *But see Vasquez-Rosario v. Noem*, No.25-cv-7427 (E.D. Pa Jan. 26, 2026) (Kenney, J) (rejecting government's

[1] Similarly, the claims here would not implicate the recent class-certification and partial-summary-judgment rulings issued by the U.S. District Court for the Central District of California. *See Bautista v. Santacruz*, 2025 WL 3289861, *4 (C.D. Cal. Nov. 20, 2025) (addressing arguments that 8 U.S.C. § 1226, not § 1225, should apply to detention claims).

argument that petitioner paroled into the country was subject to mandatory detention under § 1225(b) as an "arriving alien."

After applying for admission at the San Ysidro Port of Entry, Petitioner was paroled into the United States pursuant to the Secretary's discretionary parole authority under 8 U.S.C. § 1182(b)(5). Petitioner's discretionary parole has since expired, meaning Petitioner has returned to the detention status that existed at the time of his parole, *i.e.*, mandatory detention under § 1225(b)(2). Therefore, Petitioner is properly detained under § 1225(b)(2) during the pendency of his administrative removal proceedings under 8 U.S.C. § 1229a. For this reason, coupled with the Court's lack of jurisdiction to consider the issue, the Court should deny the petition for a writ of habeas corpus.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Russia, applied for admission to the United States on March 18, 2023, at the San Ysidro Port of Entry. ECF 1 ¶ 20; Ex. C. At the time of his application for admission, he did not possess valid entry documents, such as an unexpired immigrant visa, reentry permit, or border crossing card, and thus, Customs and Border Protection (CBP) deemed him inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* Ex. C. CBP thereafter issued a Notice to Appear charging him as removable under § 1182(a)(7)(A)(i)(I) and paroled him into the United States under § 1182(b)(5) pending his removal proceedings under § 1229a. *Id.* ¶ 22, Ex. C. This discretionary parole expired on February 16, 2024. *Id.* Ex. D. Immigration and Customs Enforcement (ICE) recently detained Petitioner on January 21, 2026, pending completion of his proceedings under § 1129a. *Id.* ¶ 24. At the time the habeas petition was filed, Petitioner was detained within the Eastern District of Pennsylvania.

III. LEGAL STANDARD

A writ of habeas corpus is an "extraordinary remedy." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). The petitioner bears the burden of showing his confinement is unlawful. *Hawk v. Olson*, 326 U.S. 271, 279 (1945); *accord Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (habeas petitioner "carries the burden of proof"); *see also* 28 U.S.C. § 2241.

Judicial review of immigration matters, including of detention issues, is limited. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 489–92 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Mathews v. Diaz*, 426 U.S. 67, 79–82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport and because public safety is at stake. *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."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *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. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

Petitioner must make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power").

IV. ARGUMENT

The Court should deny the petition because (1) this Court lacks jurisdiction to intervene in Petitioner's removal proceedings, (2) neither a grant of discretionary parole nor its later revocation or expiration changes Petitioner's legal status as an inadmissible arriving alien; (3) Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2); and (4) Petitioner's detention does not violate constitutional due process. For the same reasons, the Court should deny Petitioner's motion for preliminary injunctive relief.[2]

[2] The most significant factor in seeking preliminary injunctive relief is the likelihood of success on the merits. The government's argument is a straightforward statutory analysis in support of its position. Once the Court decides the merits the parties' competing statutory analysis claims, the decision on the petition and the preliminary injunctive relief merge. So the government rests on its response here and the matter can be resolved expeditiously, without a hearing, on the briefs.

A. This Court lacks jurisdiction to intervene in removal proceedings.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction to address his claims. *See Erie Ins. Exch. v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). He cannot meet this burden because his claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a).

1. 8 U.S.C. § 1252(g) bars Petitioner's claim because he challenges the government's action to commence removal proceedings.

Petitioner brings a statutory and constitutional challenge to the Secretary's determination to detain him under § 1225(b)(2)(A). *See* ECF 1 ¶¶ 7, 8, ECF 2 ¶ 6. But Congress has provided that "no court shall have jurisdiction to hear any cause or claim" that arises from "the decision or action" to "commence" removal proceedings or "adjudicate [those] cases." 8 U.S.C. § 1252(g); *AADC*, 525 U.S. at 483; *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 296 (3d Cir. 2020). This Court therefore lacks jurisdiction to adjudicate Petitioner's claims insofar as they arise "from the decision or action by the Attorney General [or Secretary of Homeland Security] to commence proceedings [and] adjudicate cases." 8 U.S.C. § 1252(g); *Tazu*, 975 F.3d at 296; *Valencia-Mejia v. United States*, 2008 WL 4286979, *3 (C.D. Cal. Sept. 15, 2008).

The Secretary's decision to detain is a "specification of the decision to 'commence proceedings' which ... § 1252 covers." *AADC*, 525 U.S. at 474, 485 n. 9; *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, including the "decision to take him into custody *and to detain him during his removal proceedings*" (emphasis added)); *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007); *S.Q.D.C. v. Bondi*, 2025 WL 2617973, *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, 2024 WL 4656265, *4 (M.D. Pa.

Sept. 24, 2024), *R&R adopted*, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("[I]n our view, the Attorney General's discretionary decision to place Linarez in expedited removal proceedings is precisely the action this statute refers to."); *Saadulloev v. Garland*, 2024 WL 1076106, *3 (W.D. Pa. Mar. 12, 2024) (recognizing there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"); *Khorrami v. Rolince*, 493 F.Supp.2d 1061, 1067–68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g)).

Accordingly, this Court lacks jurisdiction to adjudicate Petitioner's claim challenging the Secretary's decision to commence proceedings and detain him under § 1225(b)(2).[3]

2. 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction because Petitioner challenges the government's interpretation of a statutory provision arising from actions taken to remove him from the United States.

Even if this claim did not fall within the ambit of § 1252(g), this Court still lacks jurisdiction because Congress has chosen to channel review of immigration proceedings to the courts of appeal. "[N]o court shall have jurisdiction, by habeas corpus ... or by any other provision of law," to review any questions of law or fact "arising from any action taken or proceeding brought to remove an alien from the United States"—including interpretation and application of constitutional and statutory provisions—except on a petition for review of a final order of removal to the Court of Appeals. 8 U.S.C. § 1252(b)(9); *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal").

[3] The Government is currently reviewing the Third Circuit's decision issued in *Khalil v. President, United States of America, et al.* (No. 25-2162) and its potential impact on Section 1225(b)(2) cases such as this one. The Government notes that two Judges in this district have found that *Khalil* is distinguishable and does not prevent jurisdiction. *See e.g. Kourouma v. Jamison, et al.*, No.26-0182-KSM (January 15, 2026); *Restrepo v. Jamison*, No. 25-cv-6518 (January 20, 2026) (J. Leeson).

Congress intended to insulate threshold detention decisions from district court review. The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all … decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *AADC*, 525 U.S. at 483, 485; *see also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (observing that § 1252(b)(9) is "breathtaking in its scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings").

While § 1225(b)(9) may not bar claims challenging the conditions or scope of detention of individuals in removal proceedings, it does bar claims "challenging the decision to detain them in the first place." *Jennings*, 583 U.S. at 294 (plurality op.); *S.Q.D.C.*, 2025 WL 2617973 at *3. By making such a challenge, the habeas claim here requires a court to answer "legal questions" that arise from "an action taken to remove an alien." *Jennings*, 583 U.S. at 295 n.3 (plurality op.). Petitioner's claims "fall within the scope of § 1252(b)(9)." *Id.*

"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 PFR [*i.e.*, petition for review] process." *J.E.F.M.*, 837 F.3d at 1031. ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeals.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges … whenever they 'arise from' removal proceedings"); *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").

The petition-for-review process before courts of appeals ensures that noncitizens 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 [INA] to obviate … Suspension Clause concerns," by permitting judicial review of "nondiscretionary" Board of Immigration Appeals determinations and "all constitutional claims or questions of law"). These provisions 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 (plurality op. in *dicta*, presuming that § 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

3. 8 U.S.C. § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions, such as charge determinations regarding inadmissibility.

Furthermore, § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review … any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B).

Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings,

Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

C. Neither a grant of discretionary parole nor a later revocation or expiration of parole changes Petitioner's legal status as an inadmissible arriving alien.

Petitioner's claims in support of the petition and motion largely rest on his arguments that, since CBP paroled him into the United States under §1182(b)(5), ICE cannot now detain him under § 1225(b)(2) as an arriving alien, notwithstanding that this discretionary parole has since expired. The plain language of the INA and accompanying regulations, as well as judicial interpretation of that language, refutes this argument.

Under the INA and its implementing regulations, Petitioner was—and remains—an inadmissible arriving alien. Specifically:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry[ ] .... An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the [INA], and even after any such parole is terminated or revoked....

8 C.F.R. § 1.001.1(q); *see also* 8 U.S.C. § 1225(a)(1) ("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 ...) shall be deemed for purposes of this chapter an applicant for admission."). Thus, contrary to Petitioner's argument, the mere fact that CBP at one point exercised its discretionary parole authority under § 1182(d)(5) does not mean that Petitioner is no longer an "arriving alien" as that term is defined in the INA.

Since Petitioner remains an "arriving alien," he is thus subject to mandatory detention under 1225(b)(2). Courts have held that the statutory language of § 1225(b)(2) is clear: arriving aliens who are not clearly and beyond a doubt entitled

to admission must be detained. *See Jennings*, 538 U.S. at 287–88; *Pierre v. Doll*, 350 F.Supp.3d 327, 330 (M.D. Pa. 2018) ("Decisions under § 1182 are purely discretionary and the regulations prevent an immigration judge from 'redetermin[ing] conditions of custody' with respect to certain classes of aliens, including '[a]rriving aliens in removal proceedings, *including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5)]*'") (emphasis added).

Here, Petitioner applied for admission to the United States on March 18, 2023, at the San Ysidro Port of Entry. ECF 1 ¶ 20, Ex. C. "Thus, by definition, he is an arriving alien." *Contreras v. Oddo*, 2025 WL 2104428, *4 (W.D. Pa. July 28, 2025); *see also* ECF 1, Ex. C (Notice to Appear classifying Petitioner as an "arriving alien")."[4] Further, Petitioner arrived at the port of entry without the requisite documents to lawfully enter the United States. ECF 1, Ex. C. "Accordingly, Petitioner is an inadmissible arriving alien." *Contreras*, 2025 WL 2014428 at *4.

As an inadmissible arriving alien, the process afforded to him under § 1225(b)(2) is clear: he is subject to mandatory detention absent DHS' discretionary decision to parole him. *Id.* ("An inadmissible arriving alien, such as Petitioner, is entitled to an asylum interview based on a claim that the alien indicates an intention to apply for asylum or a fear of persecution; *the alien's detention is mandatory absent DHS's discretionary decision to parole the alien, and the alien is not entitled to a bond hearing.*" (emphasis added); *but see A-J-R v. Rokosky,* 2026 WL 25056, *5 (D.N.J. Jan. 5, 2026). That discretionary parole determination is made on "'a case-by-case basis for urgent humanitarian reasons or significant public

[4] Notably, Judge Kenney of this Court recently rejected a similar government argument relying on the "arriving alien" distinction, but did so by placing great weight on the government's reclassification of the petitioner in a superseding Notice to Appear as an "alien present in the United States" who had "arrived in the United States" one year before. *See Vasquez-Rosario v. Noem*, No. 25-cv-7427 (E.D. Pa Jan. 26, 2026), slip op. 9–10. By contrast, here, Petitioner's Notice to Appear classified him as an "arriving alien," and the government has not issued a superseding Notice to Appear. *See* ECF 1, Ex. C. The Notice to Appear attached to the petition remains the operative charging document.

benefit.'" *Contreas*, 2025 WL 2104428 at *5 (quoting 8 U.S.C. § 1182(d)(5)(A)) (citing *Pierre*, 350 F.Supp.3d at 330 ("Decisions under § 1182 are purely discretionary.")); 8 C.F.R. § 212.5(b) (setting forth general considerations for parole from custody)). Importantly, however,

> [P]arole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of [DHS], have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

Contreas, 2025 WL 2104428 at *5 (quoting 8 U.S.C. § 1182(d)(5)(A) and citing *Chi Thon Ngo v. INS*, 192 F.3d 390, 392 n.1 (3d Cir. 1999) ("When parole is revoked, the alien reverts to the status of an applicant for admission.")); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) ("An alien detained under . . . 8 U.S.C. § 1225(b), who is released from detention pursuant to a grant of parole under . . . 8 U.S.C. § 1182(d)(5)(A), and whose grant of parole is subsequently terminated, is returned to custody under [§ 1225(b) pending the completion of removal proceedings."). "In short, the decision to grant and revoke parole to an inadmissible arriving alien is discretionary." *Id.*

Here, Petitioner has not alleged that ICE unlawfully revoked his parole and, to the contrary, concedes in his Form I-589, Application for Asylum and Withholding of Removal, that his period of parole expired on February 16, 2024. ECF 1, Ex. D. Now that his parole has expired, he is returned to the custody status at the time of his parole which, as discussed in more detail below, is mandatory detention under § 1225(b)(2). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Therefore, Petitioner is lawfully detained under § 1225(b)(2).

D. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2).

There is a statutory distinction between aliens who are detained after lawful admission into the United States and those who are present without lawful

admission. An individual who "arrives in the United States," or is "present" in this country but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *Jennings*, 583 U.S. at 287; *Garibay-Robledo v. Noem*, 2025 WL 3264482, *3 (N.D. Tex. Sept. 15, 2025) (order on reconsideration Oct. 24, 2025). Applicants for admission are either covered by § 1225(b)(1) or § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (§ 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added).

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "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 [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that § 1225(b)(2)(A) is a mandatory detention statute and that individuals detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Although Petitioner may previously have been paroled into the United States after seeking admission at a port of entry, he was and remains an "applicant for admission" to the United States. *See Matter of Lemus*, 25 I.&N. Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally . . . received such permission...."). As an "applicant for admission," Petitioner's detention is mandatory, absent a grant of discretionary parole. 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission "shall be" detained).

The Supreme Court has confirmed that an alien who is present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings,* 583 U.S. at 289, 299. At issue in *Jennings* was the statutory interpretation of and interplay between § 1225(b) and § 1226. The Supreme Court reversed the Ninth Circuit Court of Appeals' imposition of a six-month time limit to § 1225(b) and § 1226(c). *Id.* at 297. In reaching that holding, the Court declared that "an alien who 'arrives in the United States,' *or* 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Id.* at 287 (emphasis added). As the Court explained, both aliens detained at the border and those without legal status residing within the United States fall under § 1225. *Id.* at 287–88. This includes Petitioner, who is an alien present in the country but not yet admitted. *See Garibay-Robledo*, 2025 WL 3264482 at *4–5 (explaining the statutory history of the INA, which supports reading the term "applicants for admission" to include aliens detained within the United States who have not been admitted).

An alien remains an applicant for admission, and subject to § 1225(b)(2), so long as he is "not clearly and beyond doubt entitled to be admitted" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A). *See also* 8 U.S.C. § 1225(a) (defining applicant for admission as *either* "[a]n alien present in the United States who has not been admitted *or* who arrives in the United States ....") (emphasis added). Further, Congress defined *all* aliens who are present in the United States without being admitted as "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1).

When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that alien (like Petitioner) desires to remain in the United States, he is necessarily "seeking admission" within

the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the alien must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3).

Petitioner remains an arriving alien and, in turn, an applicant for admission, as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2), and ineligible for a bond hearing before an immigration judge.

E. Petitioner's detention does not violate constitutional due process.

Congress broadly crafted "applicants for admission" to include undocumented persons, like Petitioner, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented persons during 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.").

The Supreme Court has repeatedly recognized this profound interest. Petitioner's mandatory detention pursuant to §1225(b) will only last the duration of his removal proceedings. *Demore,* 538 U.S. at 512 ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings"); *see also Jennings,* 583 U.S. at 304. In light of Congress's interest in regulating immigration, including by keeping specified persons in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the test

set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See generally Demore*, 538 U.S. at 531.

Petitioner's recent detention pending his removal proceedings does not violate the Due Process Clause. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (detention less than six months presumed constitutional). Congress made the decision to detain him pending removal, which is a "constitutionally permissible part of that process." *Demore*, 538 U.S. at 531.

The Third Circuit has recognized that there may come a time when mandatory civil detention without a bond hearing becomes unreasonable. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under § 1226(c)). However, at this time, Petitioner does not challenge the reasonableness of his detention under *German Santos*.

V. CONCLUSION

For the foregoing reasons, respondents respectfully request that the petition for writ of habeas corpus and motion for temporary restraining order be denied.

Respectfully submitted,

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Dated: January 28, 2026

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: January 28, 2026

/s/ Daniella D. Lees
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