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

HASANBOY OLIMOV,	:	
	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	No. 26–532
	:	
JAMAL L. JAMISON, et al.,	:	
	:	
Respondents.	:	

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

Petitioner seeks a writ of habeas corpus,[1] 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the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2), after his discretionary parole into the United States was revoked. Petitioner is a noncitizen of the United States and removable as an "arriving alien" under 8 U.S.C. § 1225(a)(1) and 8 C.F.R. § 1.2.

This petition is distinguishable from the vast majority of petitions recently considered by this district 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 is not implicated here.[2] *See, e.g., Kashranov v. Jamison*, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (Wolson, J.), *Cantu-Cortes v. O'Neill*, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); *Anirudh v. McShane*, 2025 WL 3527528 (E.D. Pa. Dec. 9, 2025) (Bartle, J.); *Juarez Velazquez v. O'Neill*, 2025 WL 3473363 (E.D. Pa. Dec. 3, 2025) (Henry, J.). Specifically, as an "arriving alien" in removal proceedings, Petitioner is subject to mandatory detention under § 1225(b). *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*, 2026 WL 196505, at *6–9 (E.D. Pa. Jan. 26, 2026) (Kenney, J.).

After arriving at the border, Petitioner was granted discretionary parole into the United States, but his parole has ended. Because Petitioner has returned to the "detention status" that existed at the time of parole, he is properly subject to mandatory

[1] Although Petitioner's filing purports also to be a "Complaint for Declaratory and Injunctive Relief," ECF No. 1, it does not appear to seek any relief separate from habeas.

[2] 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, at *4 (C.D. Cal. Nov. 20, 2025) (addressing arguments that 8 U.S.C. § 1226, not § 1225, should apply to detention claims).

detention—*i.e.*, detention without release on bond—during the pendency of his administrative removal proceedings under 8 U.S.C. § 1225(b)(2).

For the reasons set forth below, the Court should dismiss the petition for lack of jurisdiction, or if it reaches the merits, deny it.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a noncitizen of the United States and an applicant for admission into the United States. As the habeas petition acknowledges, Immigration and Customs Enforcement (ICE) recently took Petitioner into custody under 8 U.S.C. § 1225(b) and did not set a bond. Petitioner is therefore unable to obtain review of his custody by an immigration judge because he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and ineligible for release on bond. *Id.*

When this habeas petition was filed, Petitioner was detained in the Eastern District of Pennsylvania. However, according to the Online Detainee Locator System, he is currently detained at the Pike County Correctional Facility located in the Middle 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 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) this Court lacks jurisdiction to review DHS's discretionary decision to terminate parole grants; (3) neither a grant of discretionary parole nor its later revocation changes Petitioner's legal status as an inadmissible arriving alien; (4) Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2); and (5) Petitioner's detention does not violate constitutional due process. If Petitioner later brings a motion for preliminary injunctive relief, the Court can deny it for the same reasons discussed below.[3]

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 obliquely invokes the Administrative Procedure Act to challenge the determination by the Secretary of Homeland Security to detain him under 8 U.S.C. § 1225(b)(2)(A). *See* ECF No. 1 (Pet.) ¶ 30. 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

[3] 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 even if Petitioner later files a motion for a TRO or other injunction, the government rests on its response here and the matter can be resolved expeditiously, without a hearing, on the briefs.

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, at *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, at *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, 2024 WL 4656265, at *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, at *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)).

This Court lacks jurisdiction to adjudicate Petitioner's claim challenging the Secretary's decision to commence proceedings and hold him under § 1225(b)(2).

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), the district 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").

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 Khalil v. President, U.S.*, __F.4th__, 2026 WL 111933, at *9 (3d Cir. Jan. 15, 2026) ("Section 1252(b)(9) works as a 'zipper' clause, channeling most claims that even relate to removal into [petitions for review]. It ensures that petitioners get only one bite at the apple.") (cleaned up); *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.); *see also Khalil*, 2026 WL 111933, at *11 (construing binding plurality holding of *Jennings* necessarily to bar review of certain decisions made prior to final order of removal); *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.).

See also Khalil, 2026 WL 111933, at *15 (holding that INA precludes review of "legal questions that a [petition for review] court can meaningfully review later on"). *But see Kourouma v. Jamison*, 2026 WL 120208, at *3 (E.D. Pa. Jan. 15, 2026) (Marston, J.) (reading *Khalil*'s construction of § 1252(b)(9) to preclude jurisdiction over challenges "inextricably linked" to removal process); *Restrepo v. Jamison*, 2026 WL 141803, at *5 (E.D. Pa. Jan. 20, 2026) (Leeson, J.) (reading *Khalil*'s construction to preclude review of challenges that are not detention-specific and that necessarily challenge the government's decision to commence removal proceedings). Petitioner's claims here "fall within the scope of § 1252(b)(9)." *Jennings*, 583 U.S. at 295 n.3.

"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"); *see also Khalil*, 2026 WL 111933, at *11–12 (describing *Jennings*' binding plurality opinion's "strong implication that § 1252(b)(9) covers at least some challenges to detention before a final order of 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.

B. This Court lacks jurisdiction under the INA and the APA to review DHS's discretionary decision to terminate parole.

As explained above, under the INA, Congress forbids judicial review of decisions that are placed within DHS's discretion by statute. 8 U.S.C. § 1252(a)(2)(B)(ii). Parole-termination decisions are one such class of decisions because Congress gave the

Secretary of Homeland Security authority to terminate parole grants when, *"in [her] opinion,"* the purpose of parole has been served. 8 U.S.C. § 1182(d)(5)(A) (emphasis added). That language shows the decision is plainly a discretionary "decision or action," 8 U.S.C. § 1252(a)(2)(B)(ii), and this Court therefore lacks authority to review a decision by DHS to revoke Petitioner's previously granted parole. *See Samirah v. O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003) (holding DHS's authority to "grant or revoke" parole under § 1182(d)(5)(A) is a matter of agency discretion barred from review by § 1252(a)(2)(B)(ii)); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010) (same).

Moreover, while 8 U.S.C. § 1182(d)(5)(A) requires that *grants* of parole be made on a case-by-case basis, it contains no parallel language with respect to *terminations*. Congress's inclusion of a case-by-case requirement for grants of parole, but not terminations, is strong evidence that parole terminations need not be so individualized.

Finally, even if the INA's specific bar on review of discretionary decisions did not apply, Petitioner still cannot succeed on the merits because the Administrative Procedure Act (APA) does not permit review of actions and decisions (like parole termination) that are "committed to agency discretion by law." 5 U.S.C. § 701(a)(2).

The statute grants the DHS Secretary discretion to grant parole when she concludes that certain conditions are met and places no limits on the Secretary's discretion to deny or terminate parole. Specifically, it provides that DHS may end a parole grant whenever "the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served." 8 U.S.C. § 1182(d)(5)(A) (emphasis added). The statute provides no judicially manageable standards on which a court may base its review of that opinion. *See Lincoln v. Vigil*, 508 U.S. 182, 191–94 (1993); *Webster v. Doe*, 486 U.S. 592, 600 (1988) (CIA director's authority to fire an employee "whenever [he] shall deem such termination necessary or advisable in the interests of the United States" was unreviewable); *Kreis v. Sec'y of Air Force*, 866 F.2d 1508, 1513 (D.C. Cir. 1989) (statutes that turn on "an administrator's determination of the existence of [a]

condition," as opposed to the objective existence of that condition, "exude deference[]" to that determination).

The parole statute thus expressly commits the decision to the "opinion" of the Secretary as to whether the purposes of parole have been served and provides no manageable standards on which a court could base its review of that opinion. The APA thus independently forecloses the judicial review of DHS's parole-termination decision.

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

Petitioner's habeas claims largely rest on arguments that DHS impermissibly revoked his discretionary parole, leading to his current detention.

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.").

As an "arriving alien"—which constitutes a distinct category of "applicants for admission" than the category considered by the Board of Immigration Appeals in *Matter of Hurtado*, 29 I.&N. Dec. 216 (B.I.A. 2025)—Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 C.F.R. § 235.3(c)(1). Custody regulations exclude arriving aliens from receiving a bond hearing. Specifically, 8 C.F.R. § 1003.19(h)(2)(i) provides that an immigration judge "may not redetermine conditions of custody" (i.e., set bond) "with respect to ... (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act."

Courts have similarly held that the statutory language of INA § 235(b) 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 section 212(d)(5) of the Act.'")

Here, Petitioner was not admitted into the United States and was designated as an "arriving alien." ECF No. 1-7 (Notice to Appear). "Thus, by definition, he is an arriving alien."[4] *Contreras v. Oddo*, 2025 WL 2104428, at *4 (W.D. Pa. July 28, 2025). Moreover, "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.*" *Id.* (emphasis added). *But see A-J-R v. Rokosky*, 2026 WL 25056, at *5 (D.N.J. Jan. 5, 2026).

That is, "applicants for admission may be temporarily released on parole 'in a case-by-case basis for urgent humanitarian reasons or significant public 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)). 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

[4] Notably, Judge Kenney of this district 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*, 2026 WL 196505, at *5. By contrast, here, Petitioner's Notice to Appear classified Petitioner as an "arriving alien" and the government has not issued a subsequent, superseding Notice to Appear. *See* ECF No. 1-7 (Notice to Appear). The Notice to Appear attached to the petition remains the operative charging document.

> 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.")). "In short, the decision to grant and revoke parole to an inadmissible arriving alien is discretionary." *Id.*

Here, therefore, although Petitioner may previously have been paroled into the United States, a later decision to revoke that parole "is left to the discretion of the Executive Branch." *Id.* And "without Petitioner's grant of parole, his detention is mandatory as an inadmissible arriving alien." *Id.* (citing 8 U.S.C. § 1225(b)(1)). "Thus, under the applicable law, Petitioner's detention is lawful." *Id.*

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

Should the Court determine that it has jurisdiction to consider the habeas petition, it should nevertheless hold that Petitioner's argument fails on the merits.

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, at *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, 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 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 these reasons, the petition for writ of habeas corpus should be denied.

Respectfully submitted,

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Dated: February 6, 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: February 6, 2026

/s/ Mark J. Sherer
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