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

EVER CAX
A #

PETITIONER

V. **CIVIL ACTION NO: 5:26-cv-00054-DCB-BWR**

**RAPHAEL VEGARA, WARDEN OF THE
ADAMS COUNTY CORRECTIONAL CENTER
And
SCOTT LADWIG, IMMIGRATION AND
CUSTOMS ENFORCEMENT, NEW
ORLEANS FIELD OFFICE DIRECTOR**

RESPONDENTS

**RESPONDENTS' RESPONSE TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Ever Cax is a native and citizen of Guatemala who admitted that he entered the United States illegally without inspection in the area of Sasabe, Arizona on March 30, 2013.[1] On April 2, 2013, U. S. Border Patrol Agents issued Petitioner an Expedited Removal Order.[2] Petitioner was not admitted or paroled after inspection by an immigration officer and was illegally present. Petitioner claimed fear of returning to Guatemala during his arrest processing. On May 2, 2013, Petitioner was found to have a Positive Credible Fear Claim and was subsequently served an I-862 Notice to Appear.[3] He was charged with violating section 212 of the INA, specifically §212(a)(7)(A)(i) – being present in the US without being admitted or paroled. On March 14, 2014, Petitioner filed an Application for Asylum and for Withholding of

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[1] Petition [1] at 3.
[2] *See* Notice and Order of Expedited Removal dated April 2, 2013, attached as Exhibit A to Petition [1].
[3] *See* Notice to Appear dated May 2, 2013, attached as Exhibit C to Petition [1].

Removal (I-589).[4] On August 14, 2024, the Immigration Judge granted a Joint Agency/Alien Motion to Dismiss without prejudice.[5]

On Monday, June 2, 2025, Petitioner came to the attention of ICE by means of a Biometric Alert through the Department of Homeland Security Alien Criminal Response Information Management System (ACRIME) Intelligence system, when he was arrested and fingerprinted by the City of Lynn Police Department during booking procedures for the criminal offenses of Indecent Assault and Battery on a Child Under 14 years of age. Additional DHS and DOJ intelligence checks were conducted, and it was determined that Petitioner was subject to an Immigration Enforcement Action. An Immigration I-247A Detainer and an Immigration I-200 Warrant for Arrest of Agent were issued against Petitioner with the Lynn District Court in Massachusetts.

On Monday, June 2, 2025, deportation officers from the ICE Boston Fugitive Unit, working in a joint enforcement operation with Special Agents from Homeland Security Investigations (H.S.I.) and the U.S. Border Patrol, encountered Petitioner at the Lynn District Court. Petitioner was approached and confirmed his name was Ever Cax. Petitioner also confirmed his date of birth, the fact that he was born in Guatemala and that he had entered the United States unlawfully. He also confirmed that a picture of him from his electronic U.S. Immigration records was a picture of himself. He was then placed under arrent for violation of immigration laws in the United States. On June 2, 2025, Petitioner was issued a Notice to Appear.[6] On September 30, 2025, an Order of the IJ denied Petitioner's Motion to Terminate

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[4] *See* Application for Asylum and for Withholding of Removal (I-589), attached as Exhibit E to Petition [1].
[5] *See* Immigration Judge Order on Motion to Dismiss, attached as Exhibit F to Petition [1].
[6] *See* Notice to Appear, attached as Exhibit G to Petition [1].

The Removal Proceedings because Petitioner's T visa application had not yet been approved such that termination was mandatory. See 8 C.F.R. § 1003.18(d)(1)(i)(D)(4). Further for the reasons cited in the Court's Order dated September 11, 2025, Petitioner did not demonstrate he was prima facie eligible for the pending T visa such that the Immigration Court has the discretion to consider termination. See § 1003.18(d)(1)(ii)(B).[7] On October 2, 2025, the IJ granted an oral Motion to Pretermit the Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.[8] On that same day, the IJ ordered Petitioner to be removed to Guatemala.[9] On October 22, 2025, Petitioner appealed DHS' Motion to Pretermit and the Order of Removal, which are currently pending. *See* Exhibit A, Reasons for Appeal filed by Petitioner dated October 22, 2025. There is not a final order of removal. Based on a plain reading of the applicable statutes, Cax is deemed an "applicant for admission,"[10] and detention is mandatory for the duration of his removal proceedings.[11] He is currently detained at the Adams County Correctional Center.

Cax filed the instant Petition under 28 U.S.C. § 2241 challenging his detention during the removal proceedings and requesting an immediate release from custody. His Petition should be denied and dismissed for several reasons. Cax's claim that he is entitled to be released wholly lacks merit and is contrary to law. Thus, his claims should be dismissed.

Cax's claims are foreclosed by *Buenrostro-Mendez v. Bondi,* ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). In *Buenrostro-Mendez*, the Fifth Circuit held that aliens who are "applicants

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[7] *See* Order of the Immigration Judge denying Petitioner's Motion to Terminate dated September 30, 2025, attached as Exhibit J to Petition [1].
[8] *See* Order of the Immigration Judge dated October 2, 2025, attached as Exhibit K to Petition [1].
[9] *See* Order of the Immigration Judge dated October 2, 2025, attached as Exhibit L to Petition [1].
[10] 8 U.S.C. § 1225(a)(1).
[11] 8 U.S.C. § 1225(b)(2)(A).

for admission" under 8 U.S.C. § 1225(a)(1) and cannot show that they are "clearly and beyond a doubt entitled to be admitted" are subject to mandatory detention, without bond, under §1225(b)(2)(A). Here, Cax is an "applicant[]for admission" and he has failed to show he is clearly and beyond a doubt entitled to be admitted. Because Cax is indisputably subject to detention under §1225, his claims, including his due process claims, necessarily fail.

The petition should be denied and dismissed.

I. LEGAL FRAMEWORK

The Immigration and Nationality Act ("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 Branch is obligated to detain aliens pending removal. The Immigration and Nationality Act, as amended, provides that all aliens who are present within the United States and not admitted—deemed by statute to be "applicants for admission"—"shall be detained" pending their removal proceedings if they cannot show they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(a)(1), (b)(2)(A). Detention is mandatory, so aliens are not entitled to bond hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 297, 300 (2018).

a. The pre-1996 immigration laws gave preferential treatment to aliens—including bond hearings—who entered the United States unlawfully.

Before 1996, the INA required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings.[12] In 1996, Congress passed the Illegal Immigration Reform and Immigration

[12] 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); *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

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.

Among other things, that 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 v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020).

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. § 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 "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

b. IIRIRA eliminated the preferential treatment of aliens who unlawfully entered the United States and mandated detention of "applicants for admission."

Congress discarded that prior regime through enactment of Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA sought to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in

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States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010).

removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *accord Buenrostro-Mendez*, 2026 WL 323330, at *1-2 (noting that IIRIRA "aimed to reduce this incongruity" of treatment).

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. It provides that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed... an applicant for admission":

> 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). "All aliens . . .who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks (expedited removal and 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 so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those 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 these aliens, 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 processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is 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). It requires that those aliens be detained 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)[13]; *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").

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[13] Subsection (b)(2) does not apply to (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).

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants Department of Homeland Security ("DHS") discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Buenrostro-Mendez,* 2026 WL 323330, at #2n3.

Section 1226: 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. 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." *Id.* § 1226(a).

Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.*[14] In practice, the Department makes an initial custody determination. 8 C.F.R. §236.1(d)(1). The alien may then seek custody redetermination—a bond hearing—before an immigration judge and can appeal the immigration judge's custody determination to the Board of Immigration Appeals. 8 C.F.R. §§236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

That discretion does not extend to certain aliens. *Jennings*, 583 U.S. at 288. Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain aliens who are inadmissible or deportable because they (1) "committed" certain offenses; or (2) engaged in terrorism-related activities. 8 U.S.C. §1226(c)(1). Such aliens may be released only if the DHS determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or a similar person, and then only if the alien "will not pose a danger" to public

[14] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

safety and is not a flight risk. *Id.* §1226(c)(4). Congress recently amended §1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), to expand the categories of aliens subject to §1226(c).

II. Cax failed to exhaust his administrative remedies prior to filing his Petition.

As a threshold matter, Petitioner's claims should also be dismissed for failure to exhaust. Petitioner's removal proceedings remain pending. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *See, e.g.*, *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same). "Exhaustion allows an agency the first opportunity to apply [its] expertise and obviate[es] the need for [judicial] review in cases in which the agency provides appropriate redress." *Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (internal quotations omitted). It also "create[s] a useful record for subsequent judicial consideration." *Id.* Because Petitioner's removal proceedings are ongoing and pending, he has not exhausted his administrative remedies before filing the instant petition. Because Cax does not have a final administrative order from the BIA, his Petition should be dismissed for lack of administrative exhaustion.

III. Cax's claim that he is entitled to be released, is eligible for a bond hearing or that his hearing was legally deficient lacks merit.

A. Section 1252(g) bars review of Petitioner's claim[s].

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. Detention unquestionably "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 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 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.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'"). As such, judicial review of the Petitioner's claim[s] is barred by § 1252(g).

The challenge is squarely barred by 8 U.S.C. § 1252(g)—as the Supreme Court held in *AADC*. Congress provided that "no court" has jurisdiction over any cause or claim "arising from the decision or action . . . to commence proceedings, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its

terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno*, 525 U.S. at 482. In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

The Supreme Court has held that a prior version of § 1252(g) barred claims like those brought here. *See AADC*, 525 U.S. at 487-92. In a case in which aliens alleged that the "INS was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights," *id.* at 473-74, and the Government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action," *id.* at 488 n.10, the Supreme Court nonetheless held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)," *id.* at 487*; see Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020). *AADC* confirms that an alien cannot avoid the reach of §1252(g) by alleging continued detention while executing a removal order in violation of his constitutional rights. *See, e.g., AADC*, 525 U.S. at 487-92; *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999).

B. Section 1252(b)(9) bars review of the petition.

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); *AADC.*, 525 U.S. at 483.

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. 525 U.S. 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)).

Section 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); *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, "[§] 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, § 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 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 [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

Here, Cax challenges the action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

Additionally, Petitioner has pending appeals to the BIA that have not yet been finalized. Petitioner himself states in ¶56 of his Petition that "this court lacks jurisdiction to adjudicate the merits of Petitioner's removal case". Petitioner cannot contest the Immigration Judge's ruling on the merits. He received due process, but simply does not like the outcome. A favorable outcome is not guaranteed to anyone.

IV. Petitioner's statutory claims regarding application of Section 1225 are foreclosed by *Buenrostro-Mendez*.

In *Buenrostro-Mendez*, the Fifth Circuit held that aliens who are "applicants for admission"—like Petitioner—are "seeking admission" under §1225(b)(2)(A) and so are subject to mandatory detention under that provision. *Buenrostro-Mendez*, 2026 WL 323330, at *4-10. The Court explained that this interpretation was not only the best reading of the statute, but also "better honors [the] predominant goal in the enactment of IIRIRA" to "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at *9. *Buenrostro-*

Mendez thus forecloses statutory challenges by "applicants for admission" to mandatory detention under §1225(b)(2)(A). In addition, the Fifth Circuit rejected the petitioners' reliance on *Zadvydas v. Davis*, 533 U.S. 678 (2001), because that case "ha[d] no direct application to aliens who are detained and being given due process during removal proceedings." *Id.*

a. Petitioner's argument regarding the fact that he was not granted a continuance or administrative deferral of removal proceedings because of his pending T-Visa is not proper in this habeas petition.

The T-Visa is filed with a completely separate agency, the United States Citizenship and Immigration Services (USCIS). However, while Petitioner is in immigration proceedings, he can ask the judge to terminate the proceedings, but termination is not mandated in this case. Petitioner's T-visa application has not yet been approved such that termination is mandatory. [15] The IJ denied the Motion to Terminate citing another Order dated September 11, 2025.[16] In that order, the Petitioner did not demonstrate that he was prima facie eligible for the pending T-visa such that the Court had the discretion to consider termination. *See* 8 C.F.R. § 1003.18(d)(1)(ii)(B). Additionally, the proper venue to litigate the denial is in front of the BIA, not federal district court habeas proceedings.

V. Petitioner's due process claims likewise fail

Petitioner argues his mandatory detention violates his due process rights, *see Pet.* (ECF No. 1) at ¶¶69- 81 (Count III) because he was not granted a bond hearing pursuant to 8 U.S.C. § 1226(a) that evaluated his risk of flight or dangerousness to the community. This claim fails too because Petitioner is held under §1225(b)(2)(A).

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[15] *See* Order of the Immigration Judge denying Petitioner's Motion to Terminate dated September 30, 2025, attached as Exhibit J to Petition [1].
[16] *See* Order of the Immigration Judge denying Petitioner's Motion to Terminate dated September 11, 2025, attached as Exhibit I to Petition [1].

There is no dispute that Petitioner falls within the scope of §1225(b)(2)(A). He is an "alien" who is "present in the United States" and "ha[s] not been admitted," and so is an "applicant[] for admission." 8 U.S.C. §1225(a)(1). Therefore, as this Court held in *Buenrostro-Mendez* and discussed *supra*, aliens like Petitioner are subject to mandatory detention under §1225(b)(2)(A).

a. Petitioner's claims do not sound in procedural due process

The Constitution prohibits the federal government and States from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has recognized two types of due-process claims. *See Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A procedural-due-process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the "adequacy of the[] procedures" for making those determinations. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). For example, the statute in *Mathews* made the availability of disability benefits turn on whether a person is "completely disabled" within the meaning of the statute. *Id.* at 323, 336. The procedural due process claim did not challenge the statute's substantive criteria for who may receive benefits, but the adequacy of the procedures available to test whether a person fits within the criteria. *Id.* at 325-26. By contrast, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

Petitioner claims a bond hearing is required under due process. He further alleges that he was denied due process based on a legally deficient merits hearing. *See* Petition, ECF 1, at 8. But a bond hearing is merely the vehicle for making the substantive determination about flight risk or dangerousness. Because § 1225(b)(2)(A) does not require such determinations, Petitioner's claim is more of a substantive-due-process challenge, not a procedural one.

Put differently, Congress decided as a substantive policy matter to impose mandatory detention on all applicants for admission, such as Petitioner. Whether those aliens are flight risks or dangerous is irrelevant under that policy choice. Due process does not require procedures to adjudicate immaterial facts. What Petitioner is attempting is to override Congress's substantive judgment that all applicants for admission must be detained regardless of whether they are dangerous or flight risks. Procedural due process can do no such thing.

This Supreme Court's decision in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), is definitive on this point. The statute in that case required sex offenders to register with the State so their information could be published on a sex-offender registry. *Id.* at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural-due-process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

The Court rejected *Doe's* claim. It explained that "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme," and "the fact that [Doe] seeks to prove—that he is not currently dangerous—[wa]s of no consequence under" the relevant statute, which required him to register based on his prior conviction alone. *Id.* at 7. So "[u]nless [Doe] c[ould] show that that substantive rule of law [wa]s defective (by conflicting with the Constitution), any hearing on current dangerousness [would be] a bootless exercise." *Id.* at 8. The upshot: any claim that *Doe* was entitled to a hearing to adjudicate facts a legislature had not made relevant "'must ultimately be analyzed' in terms of substantive, not procedural, due process." *Id.* at 7-8. Similarly, the fact that Petitioner is complaining about his hearing does not have any bearing on the determination that Petitioner must be detained under § 1225.

The rule of *Connecticut Department of Public Safety* is simple and straightforward: "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." 538 U.S. at 9. The Fifth Circuit applied that rule in *Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017), in a similar context. *See id.* ("procedural due process does not entitle the Duarte Family to a hearing to 'establish a fact that is not material' under the Ordinance" (quoting *Connecticut Department of Public Safety*, 538 U.S. at 7)).

The Fifth Circuit also applied that same rationale to reject a procedural due process challenge against mandatory detention under §1226(c) in *Wekesa v. U.S. Attorney*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022). There, Wekesa filed a habeas petition, alleging that "his continued detention without an individualized bond hearing violates his due process rights." *Id.* at *1. The Court rejected that claim. It explained that under §1226(c) "mandates detention of any alien falling within its scope" and allows release "'only if' the alien is released for witness-protection purposes." *Id.* And "[b]ecause Wekesa d[id] not meet the statutory requirements for release under Section 1226(c)(2)," this Court affirmed the district court's denial of habeas petition. *Id.* In other words, because Wekesa indisputably was subject to detention under §1226(c), nothing he hoped to ascertain through a bond hearing would be "relevant under the statutory scheme." *Conn. Dep't of Pub. Safety*, 538 U.S. at 9.

As such, Petitioner has no procedural due process right to a bond hearing on whether he is a flight risk or danger to the community. Individualized findings about flight risk and danger are irrelevant to §1225(b)(2), which subjects Petitioner to mandatory detention based on his uncontested status as an "applicant[] for admission" who has not shown (and cannot show) he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(a)(1), (b)(2)(A). Similarly,

Petitioner's claim that his hearing was legally deficient is not relevant as he seeks to infer factual issues that are not relevant to §1225(b)(2), which subjects Petitioner to mandatory detention based on his uncontested status as an "applicant[] for admission" who has not shown (and cannot show) he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(a)(1), (b)(2)(A).

b. Even if Petitioner was otherwise asserting a viable due process claim, it would be meritless.

For more than a century, the rule has been that for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)).[17] This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). They are "'treated' for due process purposes 'as if stopped at the border.'" *Id.* This includes those that successfully evade inspection at the border: "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission'"—i.e., treated the same as if they lawfully presented themselves at a port of entry or were caught at the border. *Id.* at 140.

The Supreme Court has elsewhere made clear that lawful admission—not physical entry—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided (and thus all that the due process clause requires

[17] Although *Thuraissigiam* "was apprehended within 25 yards" of the border, the Supreme Court's reasoning in that case was not so limited. Rather, the Court emphasized the broader principle that "[a]n alien who tries to enter the country illegally is treated as an 'applicant for admission," and "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border[.]'" *Thuraissigiam* , 591 U.S. at 139-40.

under the entry fiction doctrine). For example, in *Landon*, 459 U.S. 21, the Court observed that only "once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." *Id.* at 32 (emphasis added). "Th[is] rule," the Court explained, "rests on [the] fundamental proposition" that "the power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit." *Id.* at 32; *see also Nishimura Ekiu*, 142 U.S. at 659.

This understanding that additional procedures can only be required for those who have been lawfully admitted (and not even lawfully paroled) was confirmed years before in *Kaplan v. Tod*, 267 U.S. 228 (1925). There, the Supreme Court held that a child lawfully paroled into the care of relatives for nearly nine years—but never lawfully admitted—must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230-31. That was so even though the child had been living in the interior of the country with her naturalized-citizen father and thus was presumably forming connections to the United States. *Id.* at 229. Still, because she had never been lawfully admitted, the Due Process Clause did not require any additional procedures beyond what Congress provided. *Id.* at 229-30.

Petitioner received (and is receiving) all the process due to him under the statute; that is "due process of law." *Thuraissigiam*, 591 U.S. at 138.

c. Petitioner also does not have a substantive due process right to a bond hearing.

In contrast to a procedural due process claim, which takes as a given the substantive determinations that would justify a deprivation of life, liberty, or property, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are

inadequate to justify the deprivation "at all, no matter what process is provided." *Flores*, 507 U.S. at 302.

i. Petitioner's detention without a bond hearing during the pendency of their removal proceedings does not implicate any fundamental rights.[18]

"[P]rior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings," *Demore*, 538 U.S. at 523 n.7, so such a right cannot possibly be "objectively, deeply rooted in this Nation's history and tradition." *Muñoz*, 602 U.S. at 910 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). Accordingly, rational-basis review is the appropriate standard for analyzing Petitioner's substantive-due-process claims. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under §1225(b)(2) is constitutionally permissible as long as it is "rationally related to legitimate government interests." *Id.*

Section 1225 easily clears the rational basis bar. In *Demore,* the Supreme Court considered a "substantive due process" challenge to detention under §1226(c). *Demore*, 538 U.S. at 515. In that case, Hyung Joon Kim "argued that his detention under § 1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. The Court rejected that claim. The Court explained that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's

[18] As noted *supra,* to the extent Petitioner is also alleging some type of separate claim under the Suspension Clause, that is foreclosed by the Fifth Circuit's affirming mandatory detention during removal proceedings in *Buenrostro-Mendez.* To the extent Petitioner relies on *Zadvydas v. Davis,* 533 U.S. 678 (2001) as setting some different standard other than mandatory detention under § 1225, that case does not apply while removal proceedings are ongoing. *Buenrostro-Mendez,* 2026 WL 323330, at *9.

longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court held that the aliens substantive due process "claim must fail." *Id.* at 531.

In reaching its holding, *Demore* distinguished its prior decision in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), which addressed the constitutionality of indefinite detention after a final order of removal under a different provision of the INA. *Id.* at 682, 690, 692. First, the aliens challenging their detention in *Zadvydas* were aliens for whom removal was "no longer practically attainable." *Id.* at 690. Under the circumstances, the Court explained, "the detention … did not serve its purported immigration purpose." *Id.* at 690. By contrast, §1226(c) applies to aliens "pending their removal proceedings," and so "necessarily serves the purpose of preventing" those aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore*, 538 U.S. at 528. As *Demore* noted, Congress "had before it evidence suggesting that permitting discretionary release of aliens pending their removal hearings" would result in "large numbers" of aliens "skipping their hearings and remaining at large in the United States unlawfully." *Id.* at 528.

Second, and in the same vein, *Demore* emphasized that "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent,'" whereas detention under §1226(c) pending removal proceedings "is of a much shorter duration" and "ha[s] a definite termination point." *Demore*, 538 U.S. at 530; *see also D.M.R.D. v. Andrews,* 2026 WL 353405, at *6 (E.D. Calif. Feb. 9, 2026); *Zhuang v. Bondi, et. al.,* 2026 WL 352872, at *5 (E.D. Mo. Feb. 9, 2026); *Garibay-Robledo v. Noem*, 2026 WL 81679, *9 (N.D. Texas Jan. 9, 2026); *Morales v. Noem*, 2026 WL 236307, at *9 (S.D. Fla. Jan. 29, 2026) ("Petitioner's detention is part of the deportation

process and therefore does not—absent some further showing—amount to a deprivation of due process.").

ii. The same reasons for upholding mandatory detention under §1226(c) apply to §1225(b)(2)(A).

Petitioner does not allege that his ultimate removal is "unattainable," so detention under §1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*—preventing" aliens "from fleeing prior to or during their removal proceedings, thus increasing the change that, if ordered removed, the aliens will be successfully removed." 538 U.S. at 528. As *Buenrostro-Mendez* recognized, "the Department of Justice Inspector General found in 1997 that 'when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States," and "[t]hat situation exists today at a much larger scale." *Buenrostro-Mendez*, 2026 WL 323330, at *9 (quoting 62 Fed Reg. 10312, 10323 (Mar. 6, 1997)).

Nor is detention under §1225(b)(2)(A) "indefinite" or "permanent." *Demore*, 538 U.S. at 530. As with §1226(c), detention under §1225(b)(2)(A) lasts only for the duration of "a proceeding under section 1229a of this title." 8 U.S.C. §1225(b)(2)(A); *see Jennings*, 583 U.S. at 302-03. Even then, nothing requires aliens to contest removal; to the contrary, most or all can avoid detention by withdrawing their objections to removal and voluntarily departing from the United States. *See* 8 U.S.C. §1225(a)(4) (authorizing aliens "applying for admission" to "depart immediately from the United States").

In short, removal remains a practically attainable goal, and while the proceedings remain pending, a Petitioner's detention under §1225(b)(2) bears a reasonable relation to the legitimate purposes that this Court identified in *Demore*. Section 1225(b)(2)(A) is therefore constitutional as applied to Petition.

Petitioner's claims in Counts 2 and 3 should be denied and dismissed.

Taken together, Petitioner's claims in Counts 1, 2 and 3 should be dismissed for the same reasons succinctly summarized by another district court post-*Buenrostro-Mendez*:

> Petitioner's arguments regarding sections 1225 and 1226 and their implementing regulations are foreclosed by *Buenrostro-Mendez, supra.* Likewise, his Fourth and Fifth Amendment claims that he is being held under the wrong statutory authority are also foreclosed by *Buenrostro-Mendez.* Additionally, Petitioner's Fifth Amendment Due Process Clause claims are precluded, at this juncture, by *Demore v. Kim*, 538 U.S. 510, 531 (2003), because "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Id.* (citations omitted); *see also Jennings v. Rodriquez*, 583 U.S. 281, 297 (2018) (explaining that "§§ 1225(b)(1) and 1225(b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded").

Lopez Diaz v. Dickey, 2026 WL 539339, at *1 (S.D. Tex. Feb. 26, 2026).

VI. This Court lacks jurisdiction to grant declaratory relief.

In his prayer for relief, Cax asks this Court to issue the following relief: (1) Issue a writ of habeas corpus to release Petitioner (2) Stop Respondents from Transferring Petitioner out of the district; (3) Issue an Order to Show Cause and schedule an expedited hearing; (4) Return Petitioner's Personal Property. Petition [1] at p. 14 (Subsections §§A-F).

Again, the INA specifically precludes judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229(a). Therefore, to the extent Petitioner seeks declaratory relief under this statute, this Court lacks subject matter jurisdiction to grant it.

CONCLUSION

For the reasons stated above, Cax's Petition should be denied and dismissed.

Dated: March 16, 2026

Respectfully submitted,

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