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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GONZALO CONSTANTE VALVERDE, Petitioner, vs. SHIKHA DOSANJ, Warden, Federal Detention Center, Honolulu, Hawaii; DAVID PORTER, Acting Field Office Director, Honolulu Field Office, Immigration and Customs Enforcement; PAM BONDI, Attorney General of the United States; KRISTI NOEM, Secretary of Homeland Security, Respondents.	CASE NO. CV26-00061 JAO-KJM RESPONDENTS RETURN TO PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1-1]; DECLARATION OF DEPORTATION OFFICER JAMES DOLD; EXHIBITS "A"–"E"; DECLARATION OF JOSEPH M. MCGINLEY; EXHIBIT "F"; CERTIFICATE OF SERVICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases **Page(s)**

Statutes

Statutes **Page(s)**

Rules

Regulations

Regulations **Page(s)**

Other Authorities

RESPONDENTS' RETURN TO
PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1-1]

Respondents SHIKHA DOSANJ, Warden, Federal Detention Center, Honolulu, Hawaii; DAVID PORTER, Acting Field Office Director, Honolulu Field Office, Immigration and Customs Enforcement; PAM BONDI, Attorney General of the United States; KRISTI NOEM, Secretary of Homeland Security, by and through their counsel, the United States Attorney for the District of Hawaii and Assistant United States Attorney Joseph M. McGinley, hereby submit their response to the Petition For Writ of Habeas Corpus ("Petition"). This Response is supported by the attached Declaration and the entire file herein and is submitted pursuant to Local Rule ("LR") 7.4.

I. INTRODUCTION

This Court lacks jurisdiction over the Petition because it is based on Petitioner's contention that he has been improperly classified as an "arriving alien." 8 U.S.C. § 1252(g) deprives this Court of jurisdiction to review any cause or claim by an alien "arising out of" the Secretary of Homeland Security's decision to commence a removal proceeding, adjudicate cases or execute removal orders against any alien – this jurisdictional bar applies to the Petition.

Petitioner's claims arise out of his removal proceeding and plainly challenge the Department of Homeland Security ("DHS") decision to classify the Petitioner as an "arriving alien" and charge him with removability pursuant to 8 U.S.C. §

1182(a)(7)(A)(i)(I). Aliens classified as arriving aliens are deemed to be seeking admission into the United States and are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Petitioner's challenge to DHS's decision to classify the Petitioner as an "arriving alien" subject to mandatory custody pursuant to § 1225(b) and removable pursuant to § 1182(a)(7)(A)(i)(I) should be raised before the Immigration Judge during his removal proceedings. Petitioner then may raise any adverse rulings to the Board of Immigration Appeals ("BIA") and seek a Petition for Review before the Ninth Circuit Court of Appeals, if appropriate. Petitioner can contest the classification as an "arriving alien," the basis for his removal proceeding, and the custody determination arising from the classification before the Immigration Judge. This Court, however, lacks jurisdiction to consider Petitioner's claims, and the Petition should be dismissed.

II. BACKGROUND

Petitioner is a native and citizen of Ecuador who applied for admission at San Ysidro, California on January 10, 2025. Declaration of Deportation Officer James Dold ("Dold Dec.") at ¶¶6, 7, Exhibits ("Ex.") A & B. Petitioner was not in possession of any valid entry document, and was accordingly served with a Notice to Appear ("NTA") and placed into removal proceedings under 8 U.S.C. § 1229a. Dold Dec. at ¶ 7, Ex. A. The NTA charged Petitioner as an "arriving alien" removal under 8 U.S.C. § 1182(a)(7)(i)(I). *Id.* at ¶7, Ex. A. He moved to New

York and requested that the venue of his immigration proceedings be changed from Miami to New York; the request was granted by the immigration court. Dold Dec. at ¶¶9, 10. Petitioner subsequently moved to Hawaii, though he did file a change of address or again request that venue of his immigration proceedings be changed. *Id.* at ¶¶ 11, 12. He was arrested on December 1, 2025, in Honolulu. *Id.* at ¶ 13. In the underlying 8 U.S.C. § 1229a proceedings, Petitioner requested that the Immigration Court hold a bond/custody redetermination hearing. Ex. C. The hearing on that request was scheduled for January 8, 2026. *Id.* at ¶14, Ex. C. Petitioner requested a continuance and subsequently withdrew the request. *Id.*, Ex. D. A merits hearing in Petitioner's immigration case is currently scheduled for February 26, 2026. Ex. E.

III. ARGUMENT

This Court lacks jurisdiction to consider the Petition because 8 U.S.C. § 1252(g) precludes district court review over, *inter alia*, challenges to the commencement of removal proceedings. Any challenges should be made before the immigration court, then to the BIA and Ninth Circuit, if necessary. *See* 8 U.S.C. § 1252(b)(9).

Should this Court reach the Petition's merits, it should conclude that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b), and decline to grant relief. And if this Court determines that mandatory detention is not required in this

case, then the appropriate remedy is to order a bond hearing before the immigration court, not release.

A. This Court Lacks Jurisdiction to Consider the Petition Pursuant to 8 U.S.C. § 1252(g).

By its plain terms, 8 U.S.C. § 1252(g) precludes district court jurisdiction over challenges to the *commencement* of removal proceedings against an alien; this jurisdictional bar applies here. Petitioner seeks to challenge the government's decisions to charge him with removability and detain him, which arise "from the decision [and] action" to commence removal proceedings against him. 8 U.S.C. § 1252(g). Regardless of the framing of his claims, this Court does not have jurisdiction over such a challenge.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by [the Secretary of Homeland Security] to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter."[1] *Id.* (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in

[1] The Attorney General once exercised all of that authority, but much of that authority has been transferred to the Secretary of Homeland Security. *See Clark v. Martinez*, 543 U.S. 371, 374 n. 1 (2005). Many of the INA's references to the Attorney General are now understood to refer to the Secretary. *Id.*

this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[2] Though this section "does not sweep broadly," *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021).

Section 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n. 9 (1999) ("*AADC*"). Indeed, Section 1252(g) was designed to protect the Executive's discretion and avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *Id.* at 487. It protects the government's authority to make "discretionary determinations" over whether and when to commence removal proceedings against an alien, "providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed." *Id.* at 485.

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[2] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. *See, e.g.*, *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding."); *see also, e.g.*, *Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred reviewing a Fourth Amendment false arrest claim that "directly challenge[d] [the] decision to commence expedited removal proceedings."); *Obado v. Superior Ct. of New Jersey Middlesex Cnty.*, No. CV 21-10420 (FLW), 2022 WL 283133, at *3 (D.N.J. Jan. 31, 2022) (declining to terminate the NTA and/or halt proceedings because it was a challenge to "decision to commence and adjudicate removal proceedings").

The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. *See, e.g.*, *Alvarez v. U.S. Immigr. & Customs Enf't*, 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 him into custody and to detain him during removal proceedings"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest [petitioner],

clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). The act of arresting—and in turn, detaining—an alien to serve a charging document and initiate removal proceedings is an action to commence proceedings that this Court lacks jurisdiction to review. *See Tazu*, 975 F.3d at 298–99 ("Tazu also challenges the Government's re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General's *decision* to execute his removal order, it does attack the *action* taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.").

As § 1252(g) prohibits judicial review of "any cause or claim" that arises from the commencement of removal proceedings, its bar also applies to constitutional and statutory claims. *Tazu*, 975 F.3d at 296-98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the court's interpretation from the remainder of the statute). Indeed, "[w]hile the statute creates an exception for 'constitutional claim or questions of law,' jurisdiction to review such claims is vested exclusively in the courts of appeals and can be exercised only after the alien has exhausted administrative remedies."

Ajlani v. Chertoff, 545 F.3d 229, 235 (2d Cir. 2008) (internal citations omitted); *see also id.* ("Accordingly, the district court lacked jurisdiction to review Ajlani's constitutional challenges to his removal proceedings, and it would be premature for this court to do so now."); 8 U.S.C. § 1252(a)(2)(D).

Broadly, Petitioner alleges that the government incorrectly classified him as an "arriving alien," subjected him to mandatory custody, and initiated removal proceedings on that basis. These claims are firmly within § 1252(g)'s reach. *See, e.g.*, *AADC*, 525 U.S. at 487–92 (holding that Section 1252(g) deprived district court of jurisdiction over claim that certain aliens were targeted for deportation in violation of the First Amendment.); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007) (explaining that First Amendment challenge related to immigration enforcement action "is properly characterized as a challenge to a discretionary decision to 'commence proceedings' . . . [and] is insulated from judicial review"); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (ruling that § 1252(g) prohibited review of an alien's First Amendment claim based on decision to put him into exclusion proceedings).

This court was presented with a similar scenario in *Wang v. Derr*, Case No. CV25-00231 JAO-RT (D. Haw. July 16, 2025)[3], and the reasoning in that case

[3] This decision is not available on either Lexis or Westlaw. The order is attached to this filing, and one courtesy copy will be submitted to the Court. *See* LR 7.5, Chambers Rule 10.3. If the declaration of counsel is insufficient to authenticate

should control here. There, the petitioner had been paroled into the United States and applied for an adjustment of status. *Wang*, ECF No. 46 at PageID.250–51. The Notice to Appear ("NTA") classified the petitioner as an "arriving alien" and placed him into removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* at PageID.254. He sought to challenge his designation as an "arriving alien" and subsequent mandatory detention without a bond hearing. *Id.* The court noted that the key determination was whether the government's initial decision to designate the petitioner as an "arriving alien", and the corresponding mandatory detention, "arises from" commencement of proceedings for purposes of 8 U.S.C. § 1252(g). *Id.* at PageID.257–58. The court concluded it did, and that the court accordingly lacked jurisdiction. *Id.* at PageID.276–77. The court accurately described the designation of the petitioner as an arriving alien as the "charging decision that dictates [the petitioner's] detention." *Id.* at PageID.277.

The same is true here. The Petitioner in this case was identically designated, and as the Court correctly previously noted, this charging decision dictated his mandatory detention. *See* ECF No. 1-7 at PageID.52. The Petition in this case is an attempt to challenge Petitioner's initial removal designation, which "arises from" the commencement of removal proceedings.

Petitioner cites *Rico-Tapia v. Smith*, No. CV 25-00379 SASP-KJM, 2025

Ex. F, Respondents request that the Court take judicial notice of the decision.

WL 2950089 (D. Haw. Oct. 10, 2025) in support of his position. *Rico-Tapia* is distinguishable from this case (and *Wang*) because the petitioner in that case was not designated as an arriving alien. *Rico-Tapia*, 2025 WL 2950089, at *7. The district court there also noted the change in DHS's approach to similarly situated immigrants, and that they had previously been classified as being subject to 8 U.S.C. § 1226, which provides for, *inter alia*, a bond hearing. *Id.* That difference was reflected on his NTA, which classified him as "an alien present in the United States who has not been admitted or paroled[,]" whereas, as in this case and *Wang*, the petitioners were classified as "an arriving alien."

B. 8 U.S.C. § 1252(b)(9) Further Deprives This Court of Jurisdiction.

8 U.S.C. § 1252(b)(9) further deprives this Court of jurisdiction over Petitioner's claims by channeling all challenges to immigration proceedings (and removal orders) from agency proceedings directly to the courts of appeals:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction . . . by any . . . provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added). 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. *AADC*, 525 U.S. at 483. Thus, § 1252(b)(9) requires Petitioner's claims arising out of the removal proceedings to be heard before the Court of Appeals:

> Congress enacted 8 U.S.C. § 1252(b)(9) for the important purpose of consolidating all claims that may be brought in removal proceedings into one final petition for review of a final order in the court of appeals. . . . Before 8 U.S.C. § 1252(b)(9), only actions attacking the deportation order itself were brought in a petition for review while other challenges could be brought pursuant to a federal court's federal question subject matter jurisdiction under 28 U.S.C. § 1331. Now, by establishing "exclusive appellate court" jurisdiction over claims "arising from any action taken or proceeding brought to remove an alien," all challenges are channeled into one petition.

Calcano-Martinez v. I.N.S., 232 F.3d 328, 340 (2d Cir. 2000). Thus, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2).

Moreover, Congress intended 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); *cf. 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); *Martinez v. Napolitano*, 704 F.3d 620, 622–23 (9th Cir. 2012) (analyzing the Administrate Procedure Act and holding that however a claim is framed, when the substance of a challenge "challenges the procedures and substance of an agency determination that 'inextricably linked' to the order of removal, it is prohibited by section 1252(a)(5).").[4]

In evaluating the reach of subsections (a)(5) and (b)(9), "whether the district

[4] "Section 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, "[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." 8 U.S.C. § 1252(a)(2)(D); *see also Ajlani*, 545 F.3d at 235 ("jurisdiction to review such claims is vested exclusively in the courts of appeals"). The petition-for-review process before the court of appeals thus 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; *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.").

court has jurisdiction will turn on the substance of the relief that a plaintiff is seeking." *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, which includes any challenge that is inextricably intertwined with the final order of removal that precedes issuance of any removal order, *id.*, as well as decisions to detain for purposes of removal or for proceedings, *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018).

This court has concluded that 8 U.S.C. § 1252(b)(9)'s "zipper clause" barred jurisdiction to consider claims "arising from any action or proceeding brought to remove an alien," including designations as arriving aliens and subsequent mandatory detention. *Wang*, ECF No. 46 at PageID.279 (quoting 8 U.S.C. § 1252(b)(9)). There, because the court had already concluded that the petitioner's challenge to his detention "arose from" his designation as an arriving alien on the NTA, his claims also fell within 8 U.S.C. § 1252(b)(9)'s ambit and thus should be channeled through the immigration court, and if necessary, the BIA and Ninth Circuit. *Id.*

That reasoning applies here. Petitioner is in removal proceedings and charged as an "arriving alien." Challenges to his removability and custody should be raised in immigration court and appealed as appropriate. *See* 8 C.F.R. §§ 1003.19 (discussing custody and bond determinations); 1240.1(a) (outlining

authority of immigration judges to determine removability and take other appropriate action consistent with law and regulations). Additionally, Petitioner requested a bond hearing in immigration court, sought a continuance, then withdrew the bond request. Dold Dec. at ¶14, Exs. C & D. Petitioner is aware of the administrative remedies available to him, and his desire to seek this Court's involvement in his pending immigration proceedings does not create jurisdiction where it is otherwise barred.

C. Should the Court Determine that it has Jurisdiction, it Should Conclude that Petitioner is Lawfully Detained, or Alternatively, Order that the Immigration Court Conduct a Bond Hearing.

Should the Court determine that Petitioner has carried his burden to establish jurisdiction, then it should still deny the requested relief because Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A). And if the Court determines that mandatory detention is inapplicable and that some relief is required, then the appropriate relief is a bond hearing before the immigration court, not release.

i. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).

Aliens who are present in the United States but have not been admitted are considered "applicants for admission." 8 U.S.C. § 1225(a). And if an immigration officer determines that an applicant for admission is inadmissible, "the alien *shall* be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A)

(emphasis added). Applicants for admission whom DHS places in § 1229a removal proceedings are thus subject to detention.

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. The Supreme Court described 8 U.S.C. § 1225(b)(2) as a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A) – and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] 'shall be detained for a [removal] proceeding' . . . ." *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A) – not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) "applies primarily to aliens *seeking entry* into the United States (*'applicants for admission' in the language of the statute*)." *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

The statute plainly applies to Petitioner. He is an applicant for admission

and was placed directly into removal proceedings pursuant to 8 U.S.C. § 1229a. Ex. A. He is thus subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) pending his § 1229a removal proceedings, and his (expired) parole does not demand otherwise.

ii. Applicants for Admission May Only be Released from Detention on Parole Pursuant to 8 U.S.C. § 1182(d)(5).

Applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5), which allows the Secretary of Homeland Security, in his or her discretion, to parole applicants for admission into the United States on a case-by-case basis "for urgent humanitarian reasons for significant public benefit[.]" 8 U.S.C. § 1182(d)(5)(A). However,

> such parole 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 Homeland Security, 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.

8 U.S.C. § 1182(d)(5)(A).

In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically,

the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same). Parole does not place the alien "within the United States." *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958). An alien who has been paroled into the United States under 8 U.S.C. § 1182(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Matter of Abebe*, 16 I. & N. Dec. 171, 173 (BIA 1977) (citing, *inter alia*, *Leng May Ma*, 357 U.S. 185; *Kaplan v. Tod*, 267 U.S. 228 (1925)). Following parole, the alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," 8 U.S.C. § 1182(d)(5)(A), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

iii. Section 1226 Does Not Impact § 1225's Detention Authority for Applicants for Admission.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under 8

U.S.C. §§ 1226, 1227(a), and 1229a. It does not, however, impact the directive in 8 U.S.C. § 1225(b)(2)(A) that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a]," *id.* § 1225(b)(2)(A).[5] As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting – but not requiring – the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *see also Matter of Li*, 29 I. & N. Dec. 66, 70 (BIA 2025); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (2019) (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8

[5] The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). "[I]t is a commonplace of statutory construction that the specific governs the general . . . ." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is "most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission" and in order to "eliminate the contradiction, the specific provision is construed as an exception to the general one"); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that "[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones"). Here, 8 U.S.C. § 1225(b)(2)(A) "does not negate [8 U.S.C. § 1226(a)] entirely," which still applies to admitted aliens who are deportable, "but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

U.S.C. § 1225).

Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *In Re Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006); *In Re Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999).

To interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

D. If the Court Determines that Mandatory Detention is Not Required, then a Bond Hearing Before the Immigration Court is the Appropriate Remedy.

The only statutory authority for bond lies in 8 U.S.C. § 1226, and even then, the bond decision must be made by an immigration judge. If an alien requests a bond hearing, the IJ will conduct a hearing and decide whether to release the alien based on a variety of factors. *In re Guerra*, 24 I. & N. Dec. at 40; 8 C.F.R. § 1003.19(d). If, after a bond hearing, the IJ concludes the alien should not be

released, or set the bond for an amount the alien believes is too high, the alien may appeal that decision to the BIA. 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Should this Court determine that mandatory detention is not required in this case, then the appropriate remedy is to order that the immigration court hold a bond hearing.

IV. CONCLUSION

Based on the foregoing, Respondents respectfully request that this Court find that it lacks jurisdiction over this matter and dismiss the Petition. Alternatively, the Court should determine that Petitioner is lawfully detained. And if the Court determines that any relief is required and that mandatory detention is inapplicable, then the appropriate remedy is to order the immigration court to conduct a bond hearing.

DATED: February 17, 2026, at Honolulu, Hawaii.

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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

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