UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALASAN COLLEY,

Petitioner,

v.

KEVIN RAYCRAFT, et al.,

Respondents.
_____/

CASE NO. 1:26-CV-00565

HON. ROBERT J. JONKER
U.S. District Court Judge

BRIEF IN RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE RELIEF

The Court should deny Petitioner Alasan Colley's petition for habeas relief. His detention is lawful under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225, because Petitioner is an applicant seeking admission to the United States. Petitioner is not entitled to statutory relief, and no constitutional due process concern is implicated by his detention pending a removal determination. In compliance with the Court's February 27, 2026, Order, Respondents submit this brief to address the points the Court identified. (Feb. 27, 2026, Or., ECF # 3, PageID.61.)

Petitioner was released on recognizance under 8 U.S.C. § 1226(a)(2)(B), which is materially different to being paroled into the United States under 8 U.S.C. § 1182(d)(5). To the extent statutory analysis of either decision is appropriate despite the various provisions divesting a federal court of jurisdiction to review these discretionary determinations, the differences between them are material. The statutory differences are not material, however, to the outcome of this petition; Petitioner's current detention is lawful.

The differences between parole and release on recognizance are unlikely to result in materially different due process analyses. An adjacent factor—whether the alien was admitted to

the United States—does materially affect the due process analysis. Ultimately, detention that complies with the INA during the period pending a removal determination does not implicate a due process concern, and accordingly, neither admission status nor the differences between release on recognizance and parole are likely to result in different outcomes for an alien detained under section 1225 or section 1226.

Petitioner's apprehension at an international border crossing does not affect the analysis in this case, but it could alter the analysis in a different case. Respondents are not aware of any material dispute of fact that must be resolved.

FACTUAL BACKGROUND

Petitioner is a citizen of Gambia. (Pet. Ex. B, ECF # 1-2, Not. to Appear; *see also* Pet., ECF # 1, ¶¶ 4, 24; Ex. 1, Anderson Decl., ¶ 4.) Petitioner unlawfully entered the United States on or about July 10, 2022, without inspection. (Pet. Ex. B, ECF # 1-2, Not. to Appear; *see also* Pet., ECF # 1, ¶ 4; Ex. 1, Anderson Decl., ¶ 4.) When Petitioner encountered immigration officials that day, ICE initiated removal proceedings and issued him a Notice to Appear. (Pet. Ex. B, ECF # 1-2, Not. to Appear; Pet., ECF # 1, ¶ 5; Ex. 1, Anderson Decl., ¶ 5.) Petitioner was categorized at that time as, "an alien present in the United States who has not been admitted or paroled." (*E.g.*, Pet. Ex. B, ECF # 1-2, Not. to Appear.)

The Department of Homeland Security (DHS) initially detained Petitioner, under the authority of 8 U.S.C. § 1226, pending a removal determination. (Ex. 2, Not. of Custody Det.) Petitioner requested an immigration judge review the custody determination. (*Id.*)

On July 13, 2022, DHS Immigration and Customs Enforcement (ICE) released Petitioner on recognizance pursuant to 8 U.S.C. § 1226, with conditions. (Ex. 3, Or. Rel. Recog.; Ex. 1, Anderson Decl., ¶ 6; *see also* Pet., ECF # 1, ¶ 6; Pet. Ex. C, ECF # 1-3, Or. Rel. Recog.) The

order required him to check in regularly and restricted Petitioner in his associations, activities, and changing residence, among other things. (Ex. 3, Or. Rel. Recog.)

On November 17, 2022, Petitioner reported as instructed; ICE placed him on the Alternatives to Detention program, which included quarterly home and office visit requirements. (*See id.*; Ex. 1, Anderson Decl., ¶ 7.) Petitioner was required to enroll in the Intensive Supervision Appearance Program, which required Petitioner to keep the "BI provided mobile device . . . charged and powered on at all times," and on his person; and to "inform ERO immediately" if he lost or damaged the device. (Ex. 3, Or. Rel. Recog.)

On November 25, 2022, Petitioner filed an application for asylum and withholding of removal. (Ex. 1, Anderson Decl., ¶ 8.) Petitioner appeared for individual hearings in those proceedings, where he was represented by counsel, on at least four occasions during 2024 and 2025. (*Id.* ¶ 10.) In the course of the proceedings, Petitioner admitted the factual allegations in the Notice to Appear and conceded the charge of removability. (*Id.* ¶ 9.)

On August 7, 2025, Petitioner's application for asylum and withholding of removal was denied, and he was ordered removed to Gambia. (*Id.* ¶ 11; Pet., ECF # 1, ¶ 7.) The immigration judge found Petitioner's testimony not credible, including because of inconsistencies internal to his testimony, between his testimony and written submissions, and between his testimony and corroborating evidence; changes in his testimony on cross examination; and other factors. (Pet. Ex D, ECF # 1-4, Aug. 7. 2025, Dec.) Petitioner timely appealed. (Ex. 1, Anderson Decl., ¶ 12; Pet., ECF # 1, ¶ 7.) The appeal remains pending. (Ex. 1, Anderson Decl., ¶ 12.) Petitioner accordingly is not subject to a final order of removal. (*Compare* Pet., ECF # 1, ¶ 44 (agreeing that Petitioner is not subject to 1231) *with* ¶ 34 (alleging that Respondents violated 8 C.F.R. § 241.13(i), which relates only to an alien subject to a final order of removal under section 1231).)

On January 26, 2026, Petitioner encountered ICE in outbound traffic to Canada in the Windsor Tunnel. (*Id.* ¶ 13; Ex. 4, Rec. D/I Alien; Pet., ECF # 1, ¶ 7.) He did not leave the United States or enter Canada. (*See* Ex. 4, Rec. D/I Alien.) Petitioner claimed to have ended up in the outbound lane as the result of a wrong turn, not because he was leaving the United States. (*Id.*) He was again recognized as an alien present in the United States without admission or parole. (*Id.*) During the encounter, system checks by the officials revealed that Petitioner missed a phone check-in with ICE on March 11, 2025, and an office visit on June 13, 2025. (Ex. 1, Anderson Decl., ¶ 13; Ex. 4, Rec. D/I Alien.)

ICE issued a warrant for Petitioner's arrest, thereby terminating Petitioner's Order of Release on Recognizance, and arrested Petitioner. (Ex. 1, Anderson Decl., ¶ 13; Ex. 5, Warrant.) DHS additionally terminated Petitioner from the ATD program because he was detained. (*Id.* ¶ 14.) DHS subsequently allocated bed space to Petitioner at the Calhoun County Jail in Battle Creek, Michigan, where he is presently detained under 8 U.S.C. § 1225. (*Id.* ¶¶ 13, 15; *see also* Pet., ECF # 1, ¶ 8.)

On February 19, 2026, Petitioner petitioned in habeas for immediate release or, alternately, a bond hearing under section 1226(a). (Pet., ECF # 1, ¶ 10-11 & Prayer for Relief c-d.) Petitioner additionally requested a declaration that this detention under section 1225 violates the Immigration and Nationality Act; an order prohibiting Petitioner's transfer during these proceedings; and other relief. (*Id.*, Prayer for Relief.)

STATUTORY BACKGROUND

The INA establishes or references at least five distinct versions of "parole." Respondents understand the Court's reference to "parole" to mean parole under 8 U.S.C. § 1182(d)(5), the grant of which is left to the discretion of the Secretary of Homeland Security. (*See* Feb. 27,

2026, Or., ECF # 3 at PageID.61.) Parole under section 1182(d)(5) is the "parole into the United States" referenced at various points in the INA, including in various constructions of "admitted or paroled." Release on recognizance is a form of "conditional parole," which is a release from detention under section 1226(a) of the INA left to the discretion of the Attorney General.

I. Varieties of Parole

At its most general, parole in the immigration context is a "form[] of permission . . . to enter the United States." 6 U.S.C. § 202(4). It "is a means by which the government allows aliens who have arrived at a port-of-entry to temporarily remain in the United States pending the review and adjudication of their immigration status." *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007). It is a factual "event" that is neither admission to the United States nor lawful status. *See, e.g., Texas v. U.S. Dep't of Homeland Sec.*, 756 F. Supp. 3d 310, 354 (E.D. Tex. 2024). A paroled alien may "physically enter the United States for a temporary period," but the person "nevertheless remain[s] constructively detained at the border, *i.e.* legally unadmitted, while their status is being resolved by immigration officials." *Ibragimov*, 476 F.3d at 134.

More specifically, the term "parole" is used at least five different ways in the INA. The INA establishes three varieties of parole: section 1182(d)(5) "parole into the United States" of certain nonimmigrants; section 1255 "deemed parole" for certain special immigrants; and "conditional parole" from detention under section 1226(a). There is an additional offshoot of section 1182(d)(5) parole that is created by regulation—advance parole—that may be authorized by the United States Citizenship and Immigration Services (USCIS). The INA additionally references parole in yet another context, that of an alien "released on parole, supervised release, or probation" from the custody of a non-immigration authority, such as state or local law enforcement. *See, e.g.*, 8 U.S.C. § 1231 (providing that the Attorney General may not remove an

alien sentenced to imprisonment until the alien is released, but that parole, supervised release, and similar conditions are not a reason to defer removal).

The three forms of parole created by the INA, and the fourth regulatory offshoot, are discussed below.

A. Section 1182(d)(5) creates the authority by which the Secretary of Homeland Security may temporarily parole a nonimmigrant into the United States.

One form of parole the INA creates is "parole into the United States" under section 1182(d)(5). This parole is a temporary grant of lawful presence to an inadmissible nonimmigrant. *See* 8 U.S.C. §§ 1182(d) (codifying various authorities of the Secretary of Homeland Security and the Attorney General with regard to the "[t]emporary admission of nonimmigrants"), 1182(d)(5). It represents a determination in the discretion of the Secretary of Homeland Security that a specific nonimmigrant who is applying for admission to the United States, is inadmissible, but should be temporarily permitted to be lawfully physically present in the United States. It is the form of parole referenced throughout the INA in the context of an alien who was (or was not) "admitted or paroled." *See, e.g.*, 8 U.S.C. § 1225(b) (providing for the inspection of an alien arriving in the United States who has not been "admitted or paroled"); 8 U.S.C. § 1255(a) (authorizing the Attorney General to adjust an alien's status to permanent resident only if the alien was "admitted or paroled into the United States" after inspection); *see also, e.g.*, *Texas v. U.S. Dep't of Homeland Sec.*, 756 F. Supp. 3d at 354 ("If Congress used 'paroled into the United States' in [8 U.S.C. § 1225(a)] to mean a physical entry into the United States, then the nearly identical phrase "parole into the United States" in [8 U.S.C. § 1182(d)(5)] must mean the same thing.").

Section 1182(d)(5) parole is not admission to the United States. 8 U.S.C. § 1182(d)(5)(A) ("[P]arole . . . shall not be regarded as an admission of the alien."); *see also, e.g.*,

8 U.S.C. § 1101(a)(13) (defining "admission" and "admitted," and providing that "[a]n alien who is paroled under section 1182(d)(5) of this title . . . shall not be considered to have been admitted"). Section 1182(d)(5) parole confers only specific, temporary benefits: avoidance of inspection, eligibility (by regulation) to be released from immigration detention for the duration of parole, and eligibility to seek adjustment of status under 8 U.S.C. § 1255(a). By contrast, an alien who is present in the United States but was neither admitted nor paroled is unlawfully present, and subject to the various penalties attached to that condition. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(B)(ii) (defining unlawful presence, for the purpose of this paragraph, as an alien who overstayed a visa or was present without being admitted or paroled); 8 U.S.C. § 1182(a)(6)(A)(i) (providing that an alien present in the United States without being admitted or paroled is inadmissible). One significant such penalty is ineligibility for adjustment of status to permanent resident. 8 U.S.C. § 1255(a).

Section 1182(d)(5) parole is subject to various additional limitations. One such is that parole is only available to an alien who is "applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). As a result, it commonly arises in the context of detention under section 1225(b), following the inspection of an "arriving alien" who is an "applicant for admission" but who has not yet been admitted. *See* 8 U.S.C. § 1225(b)(1)(A); *see also, e.g.*, *Texas v. U.S. Dep't of Homeland Sec.*, 756 F. Supp. 3d at 354.

Another limitation is that, as a threshold matter, parole under section 1182(d)(5) can only be granted for urgent humanitarian reasons or significant public benefit related to an individual alien's circumstances, although it generally cannot be granted to a refugee. 8 U.S.C. § 1182(d)(5)(A)-(B). The Secretary cannot grant this parole to a class of aliens or in response to a generalized analysis. 8 U.S.C. § 1182(d)(5)(A) (requiring the Secretary to engage in a "case by

case" determination of an alien's qualifications, rather than permitting a group or generalized authorization).

Even if those threshold conditions are met, however, an alien is not entitled to parole. Instead, the grant or denial of parole to a qualifying alien is left to the discretion of the Secretary of Homeland Security. *Id.* The Secretary may additionally impose conditions on the parole; its duration must be "temporary;" and its termination is also left to the Secretary's discretion. *Id.*

By contrast, the statute places no limitation on the Secretary's authority to revoke parole. *See id.* When, in the opinion of the Secretary, the purposes of the parole have been served, "the alien shall forthwith return or be returned to the custody from which he was paroled." *Id.*

Additionally, the INA does not expressly provide that a paroled alien be released from immigration custody. It makes parole into the United States under section 1182(d)(5) a condition under which an alien avoids inspection under section 1225(b)(1). This dovetails with the advance parole variation discussed below; an alien who has received advance parole is not subject to inspection on arrival. *See* 8 U.S.C. § 1225(b)(1). The INA also expressly makes parole a designation by which an otherwise inadmissible alien becomes eligible for adjustment of status to permanent resident. 8 U.S.C. § 1255(a). That, too, would be effective whether the alien were detained or not. The INA nowhere states, however, that a paroled alien be released from immigration detention.

B. Advance parole is a regulatory offshoot of parole into the United States under section 1182(d)(5) that may be granted by USCIS.

Advance parole is a regulatory offshoot of section 1182(d)(5) parole; specifically, "a practice whereby the government decides in advance of an alien's arrival that the alien will be paroled into the United States when he arrives at a port-of-entry." *E.g.*, *Ibragimov*, 476 F.3d at 132. It is a variation on section 1182(d)(5) parole. *Id.* at 132-34; *Navarro-Aispura v. Immigr. &*

Natz. Serv., 53 F.3d 233, 235 (9th Cir. 1995) ("Advance parole is an administrative procedure derived from application of 8 U.S.C. § 1182(d)(5).").

Advance parole is issued by USCIS. *See, e.g.*, 8 C.F.R. § 245.2(a)(4); 8 C.F.R. § 212.5(f). Advance parole permits the alien to leave the country briefly and, once the purpose of parole is served, to reenter the United States in the same status as before their departure. *Ibragimov*, 476 F.3d at 132. It might be granted, for example, to an alien who resides in the United States and is pursuing adjustment of status, but who wishes to temporarily leave for a funeral. *See Ibragimov*, 476 F.3d at 132. Without advance parole, such a person might be ineligible for readmission and be deemed to have abandoned his application for status. *See id.*; *see also, e.g.*, 8 C.F.R. § 245.2(a)(4)(ii).

C. Under section 1255, certain special immigrants are deemed paroled into the United States, but only for the purposes of adjusting status to permanent resident.

The second form of parole created by the INA is "deemed parole" under 8 U.S.C. § 1255. Section 1255(a) establishes the conditions under which an alien may adjust status to permanent resident. In general, only an alien who was inspected and then admitted or paroled under section 1182(d)(5) may adjust status in this way. *See generally* 8 U.S.C. § 1255(a). Section 1255 includes, however, a handful of subsections that deem certain immigrants to be paroled for the purposes of adjusting status under that provision. *See, e.g.*, 8 U.S.C. § 1255(g), (h). For example, an immigrant "who has served honorably on active duty in the Armed Forces of the United States" and meets additional conditions is "deemed paroled" for the purposes of adjusting status. *Id.* An alien deemed paroled for the purposes of section 1255 is not also paroled into the United States for the purposes of other provisions of the INA. *E.g.*, 8 U.S.C. § 1255(g) (providing that the special immigrant is only deemed to have been paroled into the United States "for the purposes of [section 1225(a)]").

D. Conditional parole is a form of relief from detention under section 1226(a); the application of section 1226, and all decisions under it, are not subject to judicial review.

The third form of parole created by the INA is "conditional parole." 8 U.S.C. § 1226(a)(2)(B). Conditional parole is a mechanism by which "the Attorney General . . . may release an alien" who has been "arrested and detained" under section 1226. *Id.* It is one of two such mechanisms created by section 1226, the other being release on bond. 8 U.S.C. § 1226(a)(2). Both release mechanisms apply only to a detention under section 1226—that is, an arrest and detention on warrant issued by the Attorney General "pending a decision on whether the alien is to be removed from the United States." *See* 8 U.S.C. § 1226(a). Both release mechanisms are subject to statutory limitations, including that neither may be granted to a criminal alien as defined in subsection 1226(c). *Id.*

An alien has no right to bond or conditional parole, and he has no right to continue bond or conditional parole once granted. Even as to an alien who qualifies for bond or conditional parole, both release mechanisms are granted and denied in the discretion of the Attorney General. 8 U.S.C. § 1226(b); *see also* 8 C.F.R. § 236.1(c)(9) (providing that bond or parole "may be revoked at any time in the discretion of" various officials, even if the conditions of bond were not breached, "in which event the alien may be taken into physical custody and detained). The grant, denial, and revocation of both mechanisms are expressly excluded from judicial review by section 1226(e). They are additionally discretionary determinations and accordingly excluded even from habeas review under 28 U.S.C. § 2241. 8 U.S.C. § 1252(a)(2)(B)(ii).

Unlike parole into the United States under section 1182(d)(5), conditional parole is subject to the limitations set forth in 8 U.S.C. § 1226, and it does not make the alien eligible for adjustment of status to permanent resident. 8 U.S.C. § 1226; *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1120 (9th Cir. 2007); *see also* 8 U.S.C. § 1255(a).

II. Release on Recognizance

An order of release on recognizance is a form of conditional parole under section 1226(a)(2)(B). *See, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1115. The order ICE commonly uses to record a release on recognizance, ICE Form I-220A, specifically cites "section 236 of the Immigration and Nationality Act," or 8 U.S.C. § 1226, as its source of authority. (*See, e.g.*, Ex. 2, Or. Rel. Recog.)

ARGUMENT

Petitioner is lawfully detained under section 1225(b). Except as provided by the statute, Petitioner has no due process right to review of or release from immigration detention while he pursues admission to the United States. Section 1225 does not provide Petitioner a right to a bond hearing, release, or related relief, unless Petitioner withdraws his application for admission with the intent to immediately leave the United States. The Court accordingly should deny this Petition for writ of habeas corpus.

The points the Court identified do not entitle Petitioner to relief. There are materially different statutory analyses for section 1182(d)(5) parole and section 1226(a)(2)(B) release on recognizance, including under the *Accardi* doctrine, which permits a court to enforce an agency's procedural regulations in some circumstances. The outcome here, however, does not change with these different analyses. Petitioner's current detention under 8 U.S.C. § 1225(b) is lawful despite both his previous detention under section 1226 and his previous release on recognizance, but it also would have been lawful if he had instead been paroled.

The due process analyses of release on recognizance and parole, by contrast, are not materially different. Constitutional due process is not implicated by either event. The extent of an alien's due process rights is established by whether he is an applicant for admission, has been

admitted, or is a United States citizen. Petitioner is an applicant for admission who has not been admitted, so his due process rights are no greater than what Congress afforded via statute. Section 1225 does not afford Petitioner a right to a bond hearing or release at any time while he pursues entry to the United States, regardless of the length of detention or whether he previously was granted release on recognizance or parole. Accordingly, to the extent there might be differences in the due-process analyses between release on recognizance under section 1226(a)(2)(B) and parole under section 1182(d)(5), again, they do not result in a different outcome for Petitioner.

Petitioner's apprehension at an international border crossing is immaterial to the Court's analysis of his petition, although it would be material to the analysis if Petitioner had left the United States.

Respondents are aware of no dispute of material fact in connection with these issues.

I. Petitioner is lawfully detained under section 1225(b) and not entitled to a bond hearing or release from custody.

When Petitioner encountered ICE officials in 2025, ICE released Petitioner from custody on an order of release on recognizance. (*See, e.g.*, Ex. 2, Or. Rel. Recog.; Ex. 1, Anderson Decl., ¶ 6.) This was a form of conditional parole under section 1226(a). The release documentation cites "section 236 of the Immigration and Nationality Act," or 8 U.S.C. § 1226, as its source of authority. (*See, e.g.*, Ex. 2, Or. Rel. Recog.)

ICE lawfully revoked Petitioner's conditional parole on January 26, 2026. (*E.g.*, Ex. 1, Anderson Decl., ¶ 13; Ex. 5, Warrant.) By statute and regulation, section 1226(a)(2)(B) conditional parole may be revoked at any time. *See* 8 U.S.C. § 1226(b); 8 C.F.R. §§ 236.1(c)(9), (10). Although no notice is required to effectuate such revocation, a Notice of Custody Determination and a Warrant for Arrest of Alien, such as the ones ICE served on Petitioner, both

effect and provide notice of such revocation. *See* 8 C.F.R. §§ 236.1(c)(9), (10); *see also* 8 C.F.R. § 236.1(b)(1) (providing that a warrant may issue under section 1226 at any time from the issuance of the notice to appear until removal proceedings are completed).

ICE subsequently detained Petitioner under section 1225(b). (Ex. 1, Anderson Decl., ¶¶ 13, 15.) This detention is lawful; Petitioner has not been admitted to the United States, and he accordingly is both an applicant for admission and seeking admission. *Buenrostro v. Bondi*, No. 25-20496, --- F.4th ---, 2026 WL 323330, at *1, *8 (5th Cir. Feb. 6, 2026). Petitioner's detention under section 1225(b) is lawful despite his previous detention and release on recognizance under section 1226. *See, e.g.*, *Montenegro Gudino v. Almodovar*, No. 1:26-cv-00402-MKV, 2026 WL 251887, at *2-3 (S.D.N.Y. Jan. 30, 2026) (finding that a conditional parole under section 1226(a)(2)(B) did not require a subsequent detention to occur under 1226). An alien may be subject to detention under 1225(b) even if he previously was released on recognizance from detention under section 1226(a). *Id.*; *see also Demir v. Noem*, No. 2:26-cv-00086-JRO-MKK, 2026 WL 706485, at *1-2 (S.D. Ind. Mar. 13, 2026); *Guillermo N. v. Bondi*, No. 26-258 (PAM/DLM), 2026 WL 272403, at *2 (D. Minn. Feb. 2, 2026); *Jimenez Martinez v. Thompson*, No. H-25-5842, 2026 WL 252098, at *1-2 (S.D. Tex. Jan. 30, 2026); *Garcia v. United States*, 2025 WL 3537592, at *1 (M.D. Fla. Dec. 10, 2025).

Under section 1225(b), Petitioner is not entitled to a bond hearing or release from custody. His previous grant of conditional parole from section 1226(a) detention does not afford him any right to relief; neither would have a previous parole into the United States under section 1182(d)(5). For these and the additional reasons stated below, the Court should deny this Petition for writ of habeas corpus.

II. Release on recognizance under section 1226(a)(2)(B) and parole under section 1182(d)(5) require materially different statutory analyses.

Release on recognizance under section 1226(a)(2)(B) is statutorily different to parole into the United States under section 1182(d)(5). *See generally Ortega-Cervantes*, 501 F.3d at 1115-1120. Most obviously, they are created by separate statutory provisions. Release on recognizance is established by and subject to the conditions set forth in 8 U.S.C. § 1226. It is a factual condition that confers release from detention under section 1226, subject to conditions. It is a tool left to the discretion of the Attorney General. 8 U.S.C. § 1226(a). Parole into the United States, on the other hand, is established by and subject to the specific conditions set forth in section 1182(d)(5). It is a factual condition adjacent to, but less than, admission to the United States; it confers specific benefits on an alien, including avoiding inspection under section 1225(b)(1) and eligibility for adjustment of status to permanent resident, but it does not necessarily grant release from custody. *See generally* 8 U.S.C. §§ 1182(a), 1225(b). It is a tool left to the discretion of the Secretary of Homeland Security. 8 U.S.C. § 1182(d)(5)(A).

Although any statutory analysis of release on recognizance under section 1226(a)(2)(B) will differ materially to an analysis of parole into the United States under section 1182(d)(5), ultimately, the statutory differences would not usually result in different outcomes for a detained alien. First, there are limited circumstances in which a court would have jurisdiction to review either provision. Second, a grant, denial, or revocation of either form of relief cannot support a statutory cause of action. Third, the different regulations implementing each of these tools could result in materially different statutory analyses under the *Accardi* doctrine, but should not in practice, because neither provision is both subject to review and created for the benefit of the alien. Fourth, both section 1225 and section 1226 permit detention and do not, by their terms, require periodic bond hearings or similar relief.

A. There are few opportunities in which to consider how the statutory analyses of release on recognizance under section 1226(a)(2)(B) and parole under section 1182(d)(5) differ, because neither decision may be reviewed by a federal court.

Statutory analysis is generally a key consideration when a federal court reviews a habeas petition, because a "prisoner" generally can petition for a writ if he is held "in custody in violation of the . . . laws . . . of the United States." 28 U.S.C. § 2241(c)(3). But the INA includes multiple overlapping provisions that preclude a federal court from reviewing at the statutory level many applications of and determinations under the immigration laws, including review in connection with a writ habeas corpus under section 2241. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (holding the current habeas statute is "subject to restrictions on the issuance of writs in immigration matters).

The INA precludes federal jurisdiction to review the application of section 1225(b), determinations made in connection with section 1225(b), claims arising from an order of removal under section 1225(b)(1), and any procedures or policies implementing section 1225(b)(1). 8 U.S.C. § 1252(a)(2)(A). It precludes judicial review of the Attorney General's judgment regarding the application of section 1226, as well as any "action or decision by the Attorney General under" section 1226 "regarding the detention of any alien or the revocation or denial of bond or [conditional] parole." 8 U.S.C. § 1226(e). And it precludes federal jurisdiction to review a claim that challenges a determination left by statute to the discretion of the Attorney General or Secretary of Homeland Security. 8 U.S.C. § 1252(a)(2)(B)(ii); *see Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

The INA does not preclude a federal court from reviewing a constitutional claim made in the appropriate forum, and a federal court retains authority to review the constitutionality of the statutory framework itself. *See, e.g.*, 8 U.S.C. § 1252(a)(2)(D); *Demore*, 538 U.S. at 516-17. A

court additionally has jurisdiction to review the extent of authority granted under the INA, which is not a matter of discretion; but it may not review an exercise (or non-exercise) of discretion. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *see also, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1113 (making a distinction under section 1252(a)(2)(B)(i) between a discretionary denial of adjustment of status and the legal determination of whether an alien is statutorily eligible for adjustment of status).

In combination, these provisions prohibit judicial (statutory) review of a claim arising from the operational decision to grant, deny, or revoke both section 1226(a)(2)(B) release on recognizance and section 1182(d)(5) parole.

B. A determination to grant, deny, or revoke release on recognizance under section 1226(a)(2)(B) cannot support a statutory cause of action, and neither can a grant, denial, or revocation of parole under section 1182(d)(5).

Section 1226(e) and section 1252(a)(2)(B)(ii) both prohibit a court from reviewing a claim related to release on recognizance. First, a court may not hear any statutory claim in connection with section 1226; all determinations regarding the application of section 1226 and any decision made under it is not subject to judicial review. 8 U.S.C. § 1226(e). Specific to conditional parole, "[n]o court may set aside any action or decision by the Attorney General under [section 1226] regarding the detention of any alien or the revocation or denial of bond or parole." *Id.* Second, a court may not hear any statutory claim arising from a decision left by immigration law to the discretion of the Attorney General. 8 U.S.C. § 1252(a)(2)(B)(i). Although section 1226 itself does not expressly preclude a federal court from granting habeas relief, section 1252(a)(2)(B)(i) does. *See id.*; *Demore*, 538 U.S. 516-17.

Together, these limitations preclude judicial review of a claim based on a violation of the statute itself related to release on recognizance, including a decision to issue a warrant under section 1226(a); detain an arrested alien under section 1226(a)(1); grant, deny, or revoke bond

under section 1226(a)(2)(A); and grant, deny, or revoke conditional parole, including by Order of Release on Recognizance, under section 1226(a)(2)(B). 8 U.S.C. § 1226; *Demore*, 538 U.S. 516-17 (holding that section 1226(e) precludes a challenge to the Attorney General's operational decisions under section 1226). These determinations are all left to the discretion of the Attorney General. 8 U.S.C. §§ 1226(a), (e). The court lacks jurisdiction to hear any claim by a petitioner, including in habeas corpus, that detention under section 1226 is unlawful because of a grant or denial of release on recognizance. *Id.*; 8 U.S.C. § 1252(a)(2)(B)(ii).

A parole grant, denial, or revocation similarly cannot support a statutory claim for relief. Although section 1182(d)(5) is not subject to the blanket limitation on review created by section 1226(e), it is a discretionary determination of the Secretary of Homeland Security. 8 U.S.C. § 1182(d)(5) ("The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily . . . any alien applying for admission to the United States . . . ."). An alleged statutory violation connected to this operational decision cannot be the subject of review by a federal court, even in habeas. 8 U.S.C. § 1252(a)(2)(B)(i); *see Demore*, 538 U.S. 516-17.

C. The different regulations implementing each of these tools could result in materially different statutory analyses under the *Accardi* doctrine.

Under the *Accardi* doctrine, as set forth in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), and its progeny, an agency's violation of its procedural regulations may, in some circumstances, give rise to a cause of action for a violation of the laws of the United States that is cognizable in habeas. Respondents understand this possibility to be a form of "statutory analysis" contemplated by the Court's Order, and accordingly, they address it briefly here.

As a "general principle," it is "always within the discretion of a court or administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it." *See, e.g., Am. Farm Lines v. Black*

Ball Freight Serv., 397 U.S. 532, 539 (1970) (quotation omitted); *see also Rieth-Riley Constr. Co. v. Kerwin*, No. 1:21-CV-407, 2024 WL 5684077, at *5 (W.D. Mich. June 21, 2024), *aff'd*, No. 24-1690, 2025 WL 1304812 (6th Cir. May 6, 2025). The *Accardi* doctrine creates a limited exception to that principle: put very generally, it places a duty on the courts to enforce an agency's procedural regulation if the agency's failure to comply with the regulatory process would substantially prejudice others, particularly where the agency's "compliance with the regulation is mandated by the Constitution or federal law." *See Battle v. Fed. Aviation Admin.*, 393 F.3d 1330, 1336 (D.C. Cir. 2005); *see also United States v. Caceres*, 440 U.S. 741, 749 (1979). But where a federal agency is "free to grant additional procedural rights in the exercise of their discretion," a reviewing court is "generally not free to impose them if the agencies have not chosen to grant them." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (quotations omitted) (refusing to read a bond-hearing requirement into 8 U.S.C. § 1226(a)(6) where the statutory text does not require it).

An *Accardi* claim is not a constitutional due process claim. *See, e.g.*, *Battle*, 393 F.3d at 1335 (holding the plaintiff waived any constitutional due process claim because his appeal was limited to his *Accardi* claim). Accordingly, where a claimant seeks to enforce a regulatory procedure, the court's corresponding *Accardi* analysis is nonconstitutional in nature, and the outcome will materially with the specific regulation and circumstances at issue. *See id.* at 1338 (holding no *Accardi* violation where the agency deviated from the regulatory process to further the overall statutory and regulatory scheme rather than to unfairly prejudice the claimant).

The *Accardi* doctrine should not create a claim in connection with either release on recognizance or parole. The doctrine is subject to many limitations and exceptions, including that it does not "establish judicial review over discretionary actions where Congress specifically

precluded such review." *Rieth-Riley Constr. Co.*, 2024 WL 5684077, at *4. As discussed above, section 1226(e) expressly precludes judicial review of the application of or determinations made under section 1226, and a court may not set aside any action or decision regarding the detention of any alien, the revocation of conditional parole, or the denial of conditional parole. 8 U.S.C. § 1226(e). A petitioner accordingly cannot state an *Accardi* claim related to release on recognizance. Similarly, the INA precludes review of any discretionary determination of the Secretary of Homeland Security, which is the core of parole under section 1182(d)(5). 8 U.S.C. § 1252(a)(2)(b)(ii).

If a federal court were to conduct an *Accardi*-style statutory analysis of the applicable regulations, however, section 1182(d)(5) parole would materially differ from release on recognizance under section 1226(a)(2)(B).

Section 1182(d)(5) parole is the subject of—or an inflection point in—ozens of regulatory provisions. Whether any of these provisions could form the basis of an *Accardi* claim is a context-specific analysis. *Compare, e.g.*, 8 C.F.R. § 253.1 (regulating paroled crewmen) *with* 8 C.F.R. § 245.2 (regulating advance parole by USCIS) *and* 8 C.F.R. § 212.12 (regulating parole of Mariel Cubans). The parole regulation a court commonly encounters is one that delegates the Secretary's authority to parole and sets standards and procedures designed to create consistency in the Secretary's authorization of parole. 8 C.F.R. § 212.5. It is this last regulation that contemplates section 1182(d)(5) parole resulting in a release from custody, unlike the text of the INA itself. *Id.* § 212.5(b).

Release on recognizance is subject to materially different regulations, but like the regulations promulgated in the context of parole, a context-specific analysis is required to determine whether any could support an *Accardi* claim. One provision, for example, establishes

a timeline for a determination as to whether an alien arrested under section 1226(a) will be "continued in custody or released on bond or recognizance." 8 C.F.R. § 287.3. Others authorize certain classes of immigration officer to exercise the discretion to release an alien on bond or conditional parole, subject to additional limitations, as well as to exercise the discretion to revoke any such bond or conditional parole. 8 C.F.R. § 236.1(c)(9), (10). A third set of regulations a court is likely to encounter are those related to the immigration court's review of custody determinations. *See* 8 C.F.R. § 236.1(c)(10), (d) (providing that certain bond and detention determinations under section 1226 may be reviewed by an immigration judge); 8 C.F.R. § 1003.19 (establishing the administrative procedures for immigration judge review).

D. Petitioner cannot prevail on a claim for violation of the laws of the United States. More generally, the differences between section 1226(a) release on recognizance and section 1182(d)(5) parole would not be likely to mandate different habeas outcomes for a petitioner.

Here, Petitioner's detention complies with the laws of the United States. Immigration officials have lawfully detained Petitioner under section 1225(b), as an applicant for admission who is applying for admission. Petitioner's initial detention under section 1226 complied with the statute and regulations, as did the initial grant of release on recognizance and its subsequent revocation, and the Court is divested of jurisdiction to review the application of section 1226 as well as these discretionary, operational determinations. The statute additionally does not entitle Petitioner to a custody redetermination, bond hearing, or release from custody under section 1225. The Court accordingly should deny Petitioner's request for a writ of habeas corpus.

More generally, the material differences between release on recognizance and parole under section 1182(d)(5) are unlikely to form the basis of a cause of action for violation of the laws of the United States, because the underlying detentions and discretionary determinations and subject to only limited court review. The federal courts are precluded from reviewing a

grant, denial, or termination of parole under section 1182(d)(5), just as they are precluded from reviewing the same in the context of a release on recognizance. The regulations are substantially different in connection with parole, but the processes are not mandated by the Constitution and were not created for the benefit of the alien; accordingly, the regulations affect no material change in the statutory analysis.

Additionally, the detention provisions underlying parole and release on recognizance—section 1225 and 1226—share important similarities that make the differences between release on recognizance and parole immaterial for most statutory purposes. *See Jennings v. Rodriguez*, 583 U.S. 281, 286, 289 (2018). "Both provisions mandate detention until a certain point and authorize release prior to that point only under limited circumstances." *Id.* at 301; *see also id.* at 296-97. The text of neither provision gives a detained alien access to periodic review of the appropriateness of the alien's detention, including by way of a bond hearing. *Id.* at 286, 297-99. Neither provision "even hint[s] that the length of detention" should be considered as a factor when determining whether to release an alien. *Id.* at 303, 306. To the contrary, the existence of parole under section 1182(d)(5) and the forms of release established by section 1226(a)(2) demonstrates "that there are no *other* circumstances under which aliens detained" under these provisions "may be released." *See id.*

For all these reasons, whether an alien in Petitioner's circumstances were detained under section 1225 or section 1226, and whether he had been previously paroled into the United States or released on recognizance, the statutory analysis would likely remain the same.

III. Release on recognizance under section 1226(a)(2)(B) and parole under section 1182(d)(5) are unlikely to result in different due process analyses because neither implicates a constitutional concern.

Petitioner's detention does not implicate a due process concern. First, the factor material to the constitutional analysis is the alien's immigration status, rather than underlying detention

authority or the specific form of release or parole. Second, the grant, denial, or revocation of parole under section 1182(d)(5) or release on recognizance under section 1226(a)(2)(B) does not violate due process; the underlying detention pending a removal determination, even without opportunity for parole or release, is constitutionally permissible. Third, a regulation that offers more protection than the Constitution requires may nevertheless give rise to due process concerns if violated, but no such concern arises in the context of parole or release on recognizance.

Here, the factor material to a due process analysis of Petitioner's detention is that Petitioner has not been admitted to the United States. His constitutional due process rights accordingly are no greater than what Congress has afforded via statute. Section 1225 does not afford Petitioner a bond hearing, regardless of the length of detention or whether he was previously paroled or released on recognizance. And Petitioner is not entitled to be released from section 1225 detention while he pursues admission to the United States. The differences between the analyses of release on recognizance and parole are subsumed by the material fact that Petitioner is not admitted to the United States.

A. Constitutional due process considerations in the immigration-detention context vary materially with the alien's admission status, which relates but does not equate to either release on recognizance or parole.

To the extent there is a material difference between the constitutional analysis of parole under section 1182(d)(5) and that of release on recognizance under section 1226(a)(2)(B), it arises from the entry and admission status of the individual alien, rather than the authority upon which an alien is released from detention. The constitutional process due to an alien varies with that individual's immigration status, not the detention or release authority at issue. *See, e.g.*, *Thuraissigiam*, 591 U.S. at 138-39.

The Fifth Amendment entitles an alien to due process of law in immigration proceedings. *See Demore*, 538 U.S. at 523; *Reno v. Flores*, 507 U.S. 292, 306 (1992). But the specific process due under the Constitution differs materially depending on the individual's immigration status. Citizens are afforded more constitutional protection than any alien. *Demore*, 538 U.S. at 522 ("Congress may make rules as to aliens that would be unacceptable if applied to citizens."). For an alien who has not entered the United States, as one stopped at Ellis Island or paroled into the United States under section 1152(d)(5), the Due Process Clause offers no protection beyond what is allocated to the alien by Congress. *See, e.g.*, *Thuraissigiam*, 591 U.S. at 138; *Zadvydas*, 533 U.S. at 692-93. Once an alien is admitted to or has entered the country, "the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens." *Zadvydas*, 533 U.S. at 693; *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950) (noting that the Constitution compelled an earlier version of the INA to "provide a hearing at least for aliens who had not entered clandestinely"). A lawful permanent resident is in "the most favored category of aliens" with regard to due process. *Demore*, 538 U.S. at 515. The "nature" of the constitutional protections available to a person thus "vary depending upon status and circumstance." *See Zadvydas*, 533 U.S. at 693-94; *Demore*, 538 U.S. at 515.

The "distinction between an alien who has effected an entry into the United States and one who has never entered runs through immigration law," and it makes "all the difference" to the constitutional analysis. *Zadvydas*, 533 U.S. at 693. "[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application." *Thuraissigiam*, 591 U.S. at 138-39 (quotation omitted). The government's power "to admit or exclude aliens is a sovereign prerogative," and the Constitution affords "plenary authority" to decide which aliens to admit and the procedures under which to admit them. *Id.* (quotation

omitted). An unadmitted alien is still seeking initial admission: he has not entered the United States, and is "'treated,' for constitutional purposes, 'as if stopped at the border.'" *Zadvydas*, 533 U.S. at 692-93 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)).

For an alien who has not been lawfully admitted into the United States, the decision of an executive or administrative officer, acting within powers expressly conferred by Congress, is due process of law. *Thuraissigiam*, 591 U.S. at 138; *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544, (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); *see also Demore*, 538 U.S. at 523; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"). The "only procedural rights of an alien seeking to enter the country are those conferred by statute." *Thuraissigiam*, 591 U.S. at 131.

Correspondingly, the detention of an alien who has not been admitted to the United States—as when an alien seeks entry to the United States, is denied, but is also denied entry to all other countries—cannot violate the Constitution. *See Mezei*, 345 U.S. at 215 (holding that due process did not require the Government even to grant a bond hearing to a non-entered alien who had been detained for over three years without any future plan for release); *see also Zadvydas*, 533 U.S. at 692-93 (noting that the petitioner in *Mezei* materially differed from the petitioner before the Court because an admitted alien acquires due-process rights not afforded to an unadmitted alien).

All persons paroled into the United States under section 1182(d)(5) are in this category: their due process protections are limited to what Congress provides. Parole under section

1182(d)(5) can only be granted to an alien who has not entered the United States and who is applying for admission. *See* 8 U.S.C. § 1182(d)(5). A recipient of parole accordingly is inherently stopped at the border, has attached no due process right beyond the statute, and may, if necessary, be detained rather than admitted to the United States. *Zadvydas*, 533 U.S. at 692-93; *see also Thuraissigiam*, 591 U.S. at 139 ("[A]liens 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.'" (quotation omitted).).

For an alien who has been admitted to the country, by contrast, the Constitution establishes a minimum threshold of due process, apart from that granted by Congress, that detention could violate. *E.g.*, *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 693, 696-97; *Wong Yang Sung*, 339 U.S. at 49-50. The Supreme Court's holding in *Zadvydas* is the bellwether example of this principle. There, the Court considered immigration detention involving three key factors. First, the alien had been admitted to the United States, thereby acquiring a constitutional liberty interest apart from the statute. *Zadvydas*, 533 U.S. at 696-97. Second, his detention under section 1231 was for the period after he had been determined removable, and accordingly, the detention had the potential to exceed the purposes of the immigration statute that authorized it. *Id.* at 696, 699-700; *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (holding in the context of civil confinement that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"). Third, the "post-removal-period detention" was "indefinite and potentially permanent," with "no obvious termination point." *See id.* The Court did not hold that this combination of factors amounted to a definite violation of the Constitution; instead, it held that the combination implicated a liberty question under the Fifth Amendment sufficient to

permit the Court to consider whether the statute could be read to permit an alternative outcome. *Zadvydas*, 533 U.S. at 696-97; *see also Jennings*, 583 U.S. at 285, 296 (noting that the constitutional-avoidance cannon requires a court to shun a statutory "interpretation that raises serious constitutional doubts" if an alternative interpretation does not).

Some persons released on recognizance have been admitted to the United States; for example, an alien admitted on a visa who overstayed. Such a person accordingly has attached more constitutional due process protections than any paroled alien. *See Zadvydas*, 533 U.S. at 693; *Wong Yang Sung*, 339 U.S. at 49-50. Many persons released on recognizance under section 1226(a)(2)(B), however, were not admitted to the United States, and they are therefore "stopped at the border" without constitutional rights apart from a statutory grant. *See Thuraissigiam*, 591 U.S. at 139.

For these reasons, the degree to which constitutional due process has attached to a person is directly commensurate with his or her immigration status. It is only indirectly connected—through that status—to the statutory provision under which he is detained or whether he is paroled or released on recognizance. For the reasons discussed in the next section, however, neither a substantive nor a procedural due process concern arises in the context of an alien detained pending a removal determination.

B. Neither parole nor release on recognizance implicates a due process concern because an alien's detention pending a removal determination does not.

In general, a person imprisoned without due process of law can petition for release under a writ of habeas corpus. The Fifth Amendment protects individuals from deprivations of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "A procedural due process violation occurs when an official deprives an individual of a liberty or property interest without providing appropriate procedural protections." *E.g.*, *Atherton v. D.C. Off. of Mayor*, 567

F.3d 672, 689 (D.C. Cir. 2009); *see Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Substantive due process protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (*quoting Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). Section 2241 effectuates these guarantees by establishing the jurisdiction of a federal court to grant a writ of habeas corpus to "a prisoner" whose custody is "in violation of the Constitution." 28 U.S.C. § 2241(c)(3).

The process due in connection with detention under section 1225 is only that provided by statute. No alien subject to section 1225 has been admitted to the United States. *See generally* 8 U.S.C. § 1225(b). The Constitution does not set a minimum required process for an unadmitted alien; the process due to an unadmitted alien is only that established by Congress. *E.g.*, *Thuraissigiam*, 591 U.S. at 138; *see Zadvydas*, 533 U.S. at 696-97; *Demore*, 538 U.S. at 526. This is true of both substantive and procedural due process. *E.g.*, *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126, at *8 (N.D. Tex. Dec. 29, 2025); *Sanchez v. Smith*, No. 4:25-CV-05384, 2025 WL 3687914, at *2 (S.D. Tex. Dec. 19, 2025).

In section 1225, Congress authorized and mandated the detention of certain aliens. *See, e.g.*, *Jennings*, 583 U.S. at 289, 301. The terms of the statute establish the outer limits of the unadmitted alien's constitutional due process. *Thuraissigiam*, 591 U.S. at 138. A court may review the extent of authority granted under the INA, but any due process claim related to section 1225 turns on the terms of the statute, not a freestanding process required by the Constitution itself. *Cf. id.* at 295-96 (holding that the Court could review a challenge to the extent of the government's authority under statutory framework of the INA as a whole).

Additionally, no constitutional liberty interest is violated by the detention of any alien during the period prior to a removal determination. Detention prior to a removal determination has already been held to be "a constitutionally valid aspect" of the immigration system, regardless of whether the alien has been admitted to the United States or not. *See Demore*, 538 U.S. at 523; *see also Jennings*, 538 U.S. at 289 (noting that the alien whose detention was at issue was a lawful permanent resident of the United States). The Supreme Court has affirmed that detention during this period does not violate the Constitution. *Demore*, 538 U.S. at 526.

Whether under the authority of section 1225 or section 1226, detention prior to a removal determination meets both conditions the Supreme Court has identified as passing constitutional muster. It has a definite termination point, that is, the end of proceedings; and it serves its immigration purpose throughout that time, that of assuring the alien's presence during removal proceedings. *Zadvydas*, 533 U.S. at 696-97, 699-700; *see also Demore*, 538 U.S. at 527-29; *cf. Jennings*, 583 U.S. at 299-301. Related to that first factor, both the United States and the detained alien generally have the ability to terminate the removal proceedings and thereby end the detention—the United States by reached a determination, and the alien by withdrawing his application for admission with the intention of immediately departing the United States. 8 U.S.C. § 1225(a)(4) ("An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States"); *see* 8 C.F.R. § 235.4.

As a result of these factors, constitutional due process is not implicated by the grant, denial, or termination of either release on recognizance under section 1226(a)(2)(B) or parole into the United States under section 1182(d)(5). Detention of an alien under section 1225 or 1226 does not raise a constitutional issue separate from the process provided by Congress. *See*

Zadvydas, 533 U.S. at 696-97; *Thuraissigiam*, 591 U.S. 103, 138. Both release on recognizance and parole arise only while a removal determination is pending, and accordingly, the statute authorizing detention passes constitutional muster. *See Zadvydas*, 533 U.S. at 696-97, 699-700. Whether detained under the authority of section 1225 or 1226, the detention is inherently time limited and reasonably related to the purpose of the detention. *See Demore*, 538 U.S. at 523, 527-29 (noting, for example, that removal determinations "would be in vain" if the applicant "could not be held in custody pending the inquiry into their true character" (quotation omitted)). For all these reasons, neither the fact of the underlying detention nor the grant, denial, or termination of relief from it raises a due-process question.

C. The statutes and regulations authorizing parole and release on recognizance are not ones that could give rise to a due process violation because they were not enacted for the benefit of the alien.

For a citizen, the Due Process Clause may be implicated when an individual challenges an agency's regulatory process. *See, e.g.*, *Caceres*, 440 U.S. at 752-53. A statute or regulation that offers more protection than the Constitution would require may nevertheless give rise to due process concerns if violated. *See id.* at 749-50. No such construction is appropriate in the context of an unadmitted alien, for whom only a congressional enactment establishes a right to due process. *Thuraissigiam*, 591 U.S. at 138 (describing the "powers expressly conferred by Congress" and the "procedure authorized by Congress" as due process for an alien denied entry).

Even if a court were to consider regulatory process to be a procedure authorized by Congress, the Due Process Clause is not implicated by an alleged violation of the regulatory process surrounding release on recognizance or parole into the United States. An agency's alleged failure to comply with its regulatory process does not implicate the Fifth Amendment unless three circumstances are met: the individual reasonably relied on the agency regulations, the regulations were promulgated for his guidance or benefit, and the individual suffered

substantially because of their violation by the agency. *See id.* For both release on recognizance and parole into the United States, neither of the first two conditions are met.

First, an alien cannot reasonably rely on receiving parole. The statute places various limitations on the Secretary's authority to grant parole, including that it cannot generally be granted to a refugee. 8 U.S.C. § 1182(d)(5)(B). Even where an alien meets the specific statutory precursors necessary to qualify for parole, the grant or denial of parole is left to the discretion of the Secretary of Homeland Security. 8 U.S.C. § 1182(d)(5)(A). The statute places no limitations on the revocation or termination of parole, except to provide that parole must be terminated when, in the opinion of the Secretary, the purposes of parole have been served. *Id.* And if an alien's parole costs a state or its residents by so little as one hundred dollars, the Secretary may be enjoined to revoke the parole. *See* 8 U.S.C. § 1182(d)(5)(C). Together, the statute provides that the grant and duration of parole are left entirely to the discretion of the Secretary, without regard to the circumstances or preferences of the alien, and only so long as the parole imposes no cost on the United States or its citizens. *See generally* 8 U.S.C. § 1182(d)(5). In these choices, the statute prevents Fifth Amendment due process protections from attaching to parole under section 1182(d)(5) because no applicant or recipient of parole can reasonably rely on it.

Second, parole under section 1182(d)(5) is not focused on the alien's benefit; it may result in a benefit to the recipient, but its application is designed to benefit the United States. For example, parole may only be granted in circumstances of "urgent humanitarian reasons or significant public benefit." *Id.* The Secretary may not parole a refugee, unless "compelling reasons in the public interest with respect to that particular alien require" it. 8 U.S.C. § 1182(d)(5)(B). The statute also makes its intended beneficiary clear by creating a cause of action for injunctive relief on behalf of a state that alleges the Secretary has failed to comply with the

limits of the parole authority. 8 U.S.C. § 1182(d)(5)(C). If a state or its residents have been harmed in the almost *de minimus* amount of one hundred dollars, they may sue to enjoin the Secretary's grant of parole. *Id.* The statute creates no cause of action for the alien. In these choices, section 1182(d)(5) demonstrates that it was not created for the alien's benefit, and accordingly, an alien cannot state a due-process violation in connection with this form of parole.

Similarly, the Due Process Clause also is not implicated in connection with an alleged violation of the regulatory processes surrounding release under section 1226(a). As discussed above, the grant, denial, and termination of release under section 1226(a)(2)(B) is not subject to judicial review. 8 U.S.C. § 1226(e). Just as with parole under section 1182(d)(5), an alien cannot establish reasonable reliance on the process, and it was not promulgated for his benefit. *See Caceres*, 440 U.S. at 752-53. No constitutional right can arise from the process created by the statute or regulations in connection with section 1226(a) release on recognizance. *See id.*

D. The Petition here does not implicate constitutional due process.

The Constitution affords Petitioner no additional due-process protection beyond that established by the INA. Petitioner was not admitted to the United States, and he accordingly did not enter it. He therefore is treated, for due process purposes, as if stopped at the border, and he is entitled by the Constitution to no process beyond that specified by Congress. *See Thuraissigiam*, 591 U.S. at 138-39.

For Petitioner, the decision of an executive or administrative officer, acting within powers expressly conferred by Congress, is due process of law. *Id.* at 138. No other constitutional liberty interest is implicated by Petitioner's detention under the INA or the grant, denial, or revocation of release. *See Zadvydas*, 533 U.S. at 696-97; *Demore*, 538 U.S. at 526.

As discussed above, Petitioner cannot prevail on a statutory claim. Because his constitutional right to process is coextensive with the statute, he also cannot prevail on a constitutional due-process claim.

IV. Petitioner's apprehension at an internation border crossing does not change the analysis of this Petition.

Petitioner's apprehension at an international border crossing does not change the analysis of this petition. A person does not depart from the United States unless there is a legal "entry" into another country. *See, e.g.*, *Matter of T-*, 6 I&N Dec. 638 (BIA 1995). Here, Petitioner neither left the United States nor entered Canada. (*See* Ex. 3, Rec. D/I Alien.) His status accordingly remained as it was when entered the United States without inspection in 2022. (*E.g.*, Pet. Ex. B, ECF # 1-2, Not. to Appear.) Petitioner is an applicant for admission who is seeking admission but not clearly and beyond a doubt entitled to be admitted, and he accordingly is subject to detention under section 1225(b). *See Buenrostro*, 2026 WL 323330, at *1.

If an alien were encountered at a port of entry after having left the United States, it would result in a different analysis. *See, e.g.*, *Ibragimov*, 476 F.3d at 132; *cf. generally Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). For example, leaving the United States usually constitutes an abandonment of any pending immigration applications, and it may otherwise negatively reset the alien's immigration status. *See id.*; *see also, e.g.*, 8 C.F.R. § 245.2(a)(4)(ii) (providing that certain aliens who leave the United States are deemed to have abandoned their application for adjustment of status, unless they were previously granted advance parole by USCIS). Additionally, encountering the alien in the outbound lane of a port of entry might serve as a basis to revoke or terminate the alien's release or parole, or otherwise might constitute a violation of the alien's obligations under immigration law and regulation.

V. There are no disputes of fact.

Respondents are aware of no dispute of fact material to the issues before the Court.

CONCLUSION

Respondents respectfully request that the Court deny Alasan Colley's petition for a writ of habeas corpus and his additional requested relief.

Respectfully submitted,

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