IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02677-CNS

JAVIER ANDRES GARCIA CORTES,

Petitioner,

v.

KRISTI NOEM, in her official capacity,
PAMELA BOND, in her official capacity,
TODD M. LYONS, in his official capacity,
JOHN FABBRICATORE, in his official capacity, and
WARDEN DENVER CONTRACT DETENTION FACILITY, whose true name is unknown,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents respond to the August 27, 2025 Order to Show Cause. *See* ECF No. 4.

Petitioner is a noncitizen who has not been lawfully admitted to the United States. In his Petition under 28 U.S.C. § 2241, Petitioner challenges the decision by the immigration judge ("IJ") in Petitioner's immigration proceedings that the IJ is without jurisdiction to consider bond under 8 U.S.C. § 1225. *See* ECF No. 1 at 15-21. Petitioner asserts that this decision violated the Immigration and Nationality Act ("INA") and the Fifth Amendment's Due Process Clause because Petitioner should not subject to mandatory detention under 8 U.S.C. § 1225, and instead should be subject to a bond hearing under 8 U.S.C. § 1226(a). Petitioner does not challenge the agency's decision to initiate removal proceedings against him and he does not challenge the agency's authority to detain him in the first instance. Instead, Petitioner only challenges the agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing.

The Petition should be denied. *First*, INA deprives this Court of jurisdiction to review Petitioner's claims regarding the immigration judge's bond decisions because Petitioner is challenging decisions and actions to commence removal proceedings. *See* 8 U.S.C. §§ 1252(g), 1252(b)(9). *Second*, his Petition is meritless: Petitioner's detention is lawful under 8 U.S.C. § 1225 because he is an applicant for admission who is not "clearly and beyond a doubt entitled to be admitted" to the United States. Under these circumstances, Petitioner "shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the Petition should be denied.

BACKGROUND

I. Factual Background

Petitioner is a native and citizen of Columbia. *See* Exhibit 1, Declaration of S. Blea ("Blea Decl.") at 2, ¶ 4; ECF No. 1 at 12, ¶ 51. On April 17, 2018, Petitioner was admitted to the United States on a nonimmigrant B-2 visa, with permission to remain for a temporary period not to exceed October 16, 2018. Blea Decl. at 2, ¶5, ECF No. 1 at 12, ¶ 51. Petitioner unlawfully remained in the United States because he did not depart on or before October 16, 2018. Blea Decl. at 2, ¶ 6.

In 2022 and 2023, while unlawfully remaining in the United States, Petitioner filed an immigrant petition and an application to adjust status with U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶7; ECF No. 1 at 13, ¶¶ 56-57. As of the date of this Response, USCIS has yet to adjudicate Petitioner's applications. *Id.*

In 2023, Petitioner filed Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records ("Advance Parole") with USCIS. Blea Decl. at 2, ¶ 8. On August 10, 2023, USCIS approved Petitioner's application for Advance Parole. *Id.*; ECF No. 1 at 13, ¶ 58.[1]

At an unknown date before November 20, 2024, Petitioner travelled outside of the United States. Blea Decl. at 2, ¶ 10. Then, on November 20, 2024, Petitioner travelled back to the United States, using the Advance Parole to request parole at a port of entry. *Id.* at 2-3, ¶11.

ICE officers encountered Petitioner, determined that he is removable from the United States, and detained him pending a final determination in removal proceedings on August 15, 2025. Blea Decl. at 3, ¶13, ECF No. 1 at 13, ¶¶ 60-61. That same day, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA"), initiating immigration court proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review. *Id.* at 3, ¶ 14, ECF No. 1 at 13-14, ¶¶ 62-64. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C.

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[1] DHS has parole authority pursuant to 8 U.S.C. § 1182(d)(5). Under that authority, DHS may exercise its discretion to issue an Advance Parole document to an alien who is inside the United States but seeks to travel outside the United States then return to the United States, present himself at a port of entry, and seek parole into the United States. Advance Parole allows an alien to travel outside the United States and return without abandoning their pending application before USCIS. But it does not accord Petitioner lawful status in the United States. Blea Decl. at 2-3, ¶¶9-10.

§ 1182(a)(7)(A)(i)(I) (an immigrant is inadmissible if at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.*[2]

Four days later, Petitioner filed a request for custody redetermination before the IJ on August 19, 2025. Blea Decl. at 3, ¶ 16. Petitioner appeared before the IJ for a custody determination hearing two days later on August 21, 2025. *Id.* at 3-4, ¶ 17. DHS requested a short continuance to amend the NTA. *Id.* The IJ granted DHS's motion, and rescheduled the hearing. *Id.*

The next day, DHS amended the NTA by filing a Form I-261, Additional Charges of Inadmissibility/Deportability ("I-261") on August 22, 2025. *Id.* at 4, ¶ 18. Petitioner appeared before the IJ for a custody redetermination hearing three days later on August 25, 2025. *Id.* ¶ 19. At that time, the IJ ruled that she did not have jurisdiction to redetermine Petitioner's custody or issue a bond. *Id.*

The next day, Petitioner appeared before the IJ for his initial hearing in removal proceedings on August 26, 2025. *Id.* at 4, ¶ 21. The IJ sustained the charge of inadmissibility. *Id.*

Petitioner remains detained pursuant to 8 U.S.C. § 1225. *Id.* ¶ 24.

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[2] The NTA terminated Petitioner's parole under 8 C.F.R. § 212.5(e)(2)(i). Blea Decl. at 3, ¶ 15.

II. Legal Background for Aliens Seeking Admission to the United States

A. Detention under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" **or** "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Per section 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. The term "admission" is defined by the INA to mean "the lawful entry of the alien into the United States after inspection *and* authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added); *see also* 8 C.F.R. § 1235.1 (setting forth inspection procedures).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

In contrast to section 1225(b)(1), and relevant to Petitioner's detention here, section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. Section 1225(b)(2) "applies to *all* applicants for admission not covered by § 1225(b)(1)." *Id.* (emphasis added). Under section 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings … 8 U.S.C. § 1225(b)(2)(A) mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226, in contrast, provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under section 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

ARGUMENT

The Court should deny the Petition. *First*, the Court lacks jurisdiction to review ICE's initiation of removal proceedings under 8 U.S.C. § 1252. *Second*, even if the Court determines it has jurisdiction, the Court should find that Petitioner is properly detained under section 1225(b)(2)(A) because he falls within the scope of the statute. And the Court should reject Petitioner's argument that he may only properly be detained under section 1226(a), because there is no textual support for his argument. *Third*, the Court should reject Petitioner's due-process claims because he has received all process due under the Constitution. *Lastly*, Petitioner's *Accardi* claim fails because Petitioner fails to identify any policy or directive that gives rise to an enforceable right.[3]

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[3] A writ of habeas corpus may only be properly issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Therefore, the only proper respondent on a petition for a writ of habeas corpus is the detainee's immediate custodian. Here, the Secretary of the Department of Homeland Security, the Attorney General, the Acting Director of ICE, and the Field Office Director of Ice, are not proper respondents. Petitioner alleges that he is detained at the Denver Contract Detention Facility, and that the Warden of the Denver Contract Detention facility is the "immediate custodian" of Petitioner. ECF No. 1 at 3, 4. Therefore, only the Warden of the Denver Contract Detention Facility is a proper respondent in this case, and the remaining respondents should be dismissed.

I. This Court Lacks Jurisdiction To Review the Initiation of Removal Proceedings under 8 U.S.C. § 1252.

Federal law limits—and in this case forecloses—federal district court review of decisions and actions taken by the Executive Branch that relate to the removal of aliens. *See, e.g.*, 8 U.S.C. § 1252(b)(9), (g). The Court should deny the Petition in its entirety for lack of subject-matter jurisdiction.

A. The Court lacks jurisdiction to hear the Petition under section 1252(g).

Section 1252(g) 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 Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter."[4] 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) thus eliminates jurisdiction "[e]xcept as provided in 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."[5] 8 U.S.C. § 1252(g). Except as provided in section 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*,

[4] Much of the Attorney General's authority has been transferred to the Secretary of Homeland Security and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005).

[5] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("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.

986 F.3d 959, 964–65 (7th Cir. 2021).

As the Supreme Court explained in *Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), section 1252(g) was "designed to give some measure of protection" to immigration authorities' discretionary decisions regarding the commencement of removal proceedings. 525 U.S. 471, 485 (1999). Section 1252(g) was enacted to preserve the executive's discretion to, among other things, initiate stages of the removal process. *See AADC*, 525 U.S. at 483. It only makes sense that the decision to commence removal proceedings—as relevant to this case—would require detention pending removal proceedings under section 1225 for applicants for admission.

In addition, section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

At their core, Petitioner's claims here stem from his mandatory detention during removal proceedings under section 1225. ECF No. 1 at 6-10. But that detention must logically arise from the *decision to commence such proceedings* against Petitioner because detention is mandatory under section 1225 pending removal proceedings for applicants for admission. *See, e.g., Valencia-Mejia v. United States*, No. CV 08–2943

CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *see also Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3rd Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order). As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); 8 U.S.C. § 1252(g).

As such, because Petitioner's challenge to his mandatory detention under section 1225 is a claim arising from the commencement of proceedings and/or the method by which proceedings were commenced, judicial review of the Petition is barred by section 1252(g).

B. The Court also lacks jurisdiction to hear the Petition under section 1252(b)(9).

Like the section 1252(g) analysis above, under section 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United

States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *AADC*, 525 U.S. at 483.

Petitioner here challenges the decision and action to detain him under section 1225, which arises from an action or decision taken by the government to commence removal proceedings, which is thus an "action taken . . . to remove [them] from the United States." *See id.* By its terms, an applicant for admission subject to detention under section 1225(b)(2)(A) is "detained for a proceeding under section [1229a]." 8 U.S.C. § 1225(b)(2)(A). This conclusion is supported by *Jennings*, where the Supreme Court determined that "§ 1252(b)(9) does not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." 583 U.S. at 294–95).

But because Petitioner is challenging the decision to detain him in the first place under section 1225, *see* ECF No. 1 at 2, and because his detention pending removal proceedings is mandatory under section 1225(b)(2), the Court also lacks jurisdiction under section 1252(b)(9).

II. Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A).

To the extent the Court finds it has jurisdiction to hear the Petition, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A) because he unambiguously meets every element in the text of the statute, which mandates that he remain in detention during the pendency of his removal proceedings.

A court's "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). That is, when the text of a statute is unambiguous in the context of the facts of the case, "[t]hat is the only 'step' [of interpretation] proper for a court of law." *McGirt v. Oklahoma*, 591 U.S. 894, 914 (2020).

The statute at issue in this case—8 U.S.C. § 1225(b)(2)(A)—is simple and unambiguous. Including its statutory definitions, it is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). In this case, Petitioner falls squarely within the ambit of section 1225(b)(2)(A)'s mandatory detention requirement.

To start at the beginning, Petitioner is an "applicant for admission" to the United States. "Applicant for admission" is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any noncitizen "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under the plain terms of the statute, all unadmitted noncitizens present in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present in the United States, or whether they ever had the subjective intent to properly apply for admission. *See id.*

Here, based on the plain text of the statute, Petitioner is unambiguously an "applicant for admission" because he is a noncitizen, he is not admitted, and he is present in the United States when he was apprehended. Petitioner was initially admitted to the United States in April 2018 on a nonimmigrant B-2 visa, with permission to remain until October 16, 2018, Blea Decl. at 2, ¶5, ECF No. 1 at 12, ¶ 51, but unlawfully remained in the United States because he did not depart on or before October 16, 2018. Blea Decl. at 2, ¶6. Although Petitioner has filed an application to adjust his status with USCIS, USCIS has yet to adjudicate Petitioner's applications. *Id.* ¶ 7. And while Petitioner was granted Advance Parole, that *did not* accord Petitioner lawful status in the United States. *Id.* at 2-3, ¶¶ 8-10. Accordingly, under section 1225(a), Petitioner has not been admitted. Indeed, this does not appear to be in dispute. *See, e.g.*, ECF No. 1 at 8-14.

While the plain meaning of many of the terms in section 1225(b)(2)(A) may imply to some that the statute only applies to noncitizens in the process of initially *arriving* at an international border, the statutory definitions provided for those terms make it clear that section 1225(b)(2)(A) is broad, and applies to noncitizens who have already entered or remain in the United States unlawfully. This reasoning is supported by the Supreme Court. As noted above, and as explained in *Jennings*, applicants for admission fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Section 1225(b)(2), on the other hand, is "broader" and "serves as a catchall provision that applies to *all applicants for admission* not covered by 1225(b)(1) (with specific exceptions not relevant here)."

Jennings, 583 U.S. at 837 (emphasis added). Therefore, the term "an alien seeking admission" in § 1225(b)(2)(A) does not refer to a noncitizen attempting to physically access the United States. *See id.*

Next, Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," and, as such, under section 1225(b)(2)(A), his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). DHS determined that Petitioner was subject to removal and charged him with being inadmissible pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). Blea Decl. at 3, ¶ 14. Thus, Petitioner cannot demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as he is present in the United States without yet being admitted or paroled,[6] he is inadmissible per 8 U.S.C. § 1182(a)(6).

Thus, because Petitioner is an applicant for admission, and Petitioner has not demonstrated that he is clearly and beyond a doubt entitled to be admitted, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained.

III. Section 1226(a) is not applicable to Petitioner

Despite section 1225's clear mandatory detention language, Petitioner appears to claim that his detention should fall under 8 U.S.C. § 1226(a). ECF No. 1 at 15-16. But this argument is belied by the language of section 1225(b) itself, which states that an applicant for admission "shall be detained for a proceeding under section 1229a of

[6] Although he was granted Advance Parole, as noted, Petitioner's applications with USCIS have not yet been approved. Blea Decl. at 2, ¶7.

this title." Indeed, the Board of Immigration Appeals opinion in *In the Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), issued just days ago, concluded decisively that section 1225(b)(2)(A), and not section 1226(a), covers inadmissible noncitizens.

In addressing the issue of whether section 1226(a) controls over section 1225(b), the Court must again begin with the "plain language" of the INA. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute."). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences.").

As noted above, Petitioner is an "applicant for admission" under 8 U.S.C. § 1225(a)(1) because he has not yet been admitted. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020) ("'[A]n alien present in the United States who has not been admitted . . .' is deemed 'an applicant for admission.'") (quoting 8 U.S.C. § 1225(a)(1)). Applicants for admission remain applicants for admission **unless and until** an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under [INA] section 240." *Id.*; *see also Jennings*, 583 U.S. at 288.[7]

There is no legal authority for the proposition that after some undefined period of time residing in the United States, an applicant for admission is no longer "seeking admission," and has somehow converted to a status that renders him or her eligible for a bond hearing under section 1226(a). This proposition would instead leave unanswered which applicants for admission would be covered by 8 U.S.C. § 1225(b)(2)(A), if applicants for admission who have been living for years in the United States without admission (even with Advance Parole) are somehow exempt from (b)(2)(A), and instead fall under section 1226(a). This interpretation would render section 1225(b)(2)(A) superfluous.

Therefore, ICE does not have discretion to detain "applicants for admission" who otherwise fall within section 1225(b)(2)(A) under a different statute that would allow the noncitizen to be released on bond, such as section 1226(a), because that would nullify the mandatory detention required by section 1225(b)(2)(A). *See Jennings*, 583 U.S. at 297.[8]

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[7] Remaining in the United States for a lengthy period of time following entry by itself does not constitute an "admission." *See* 8 U.S.C. § 1101(a)(13)(A) (2018) (defining "admission").

[8] Petitioner also contends that, in "a complete reversal," DHS has changed its legal position as to whether section 1225 or section 1226 should apply to applicants for admission. *See, e.g.*, ECF No. 1 at 10. But as explained above, the statutory text of the INA is clear and explicit in requiring mandatory detention of all aliens who are applicants for admission. *See* 8 U.S.C. § 1225(b)(1), (2); *see also Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command").

IV. Petitioner's due-process claim is without merit.

Petitioner claims that his current detention is without cause and in violation of his constitutional rights to due process. ECF No. 1 at 16-21. This argument fails. The cause of his detention is that the Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above.

An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). And the Supreme Court has held that applicants for admission, such as Petitioner, are only entitled to the protections set forth by statute and that "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "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." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The broad scope of the political branches' authority over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). Accordingly, "certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

The Supreme Court has explained that applicants for admission lack any constitutional-due-process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination". *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." 591 U.S. at 139-40.

As explained by the Supreme Court, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country …". *Thuraissigiam*, 591 U.S. at 139. Stated further, "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due-process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court held that this same "threshold" rule applies to individuals, like Petitioner, who are apprehended after trying "to enter the country illegally" since by statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location" and therefore the

Supreme Court rejected the argument that an individual who "succeeded in making it 25 yards into U.S. territory before he was caught" should be entitled to additional constitutional protections. *Id.* at 140.

Instead, applying the "century-old rule regarding the due process rights of an alien seeking initial entry[,]" the Court explained that aliens arrested after crossing the border illegally, such as Petitioner, have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140. The Court was clear: "the Due Process Clause provides nothing more" than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and also seek parole from the agency. *Id.*

The Supreme Court's decision in *Thuraissigiam* is instructive. In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. Specifically, the Court held that "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("In concluding that Thuraissigiam's due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides.").

This Court should apply the "century-old rule" reaffirmed in *Thuraissigiam* and conclude that Petitioner's due-process rights are coextensive with the rights provided under statute. Here, the law provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [INA] section 240." 8 U.S.C. § 1225(b)(2)(A).

Moreover, mandatory detention is warranted under 8 U.S.C. § 1229a whether the Petitioner remains in ongoing removal proceedings or is later processed for expedited removal. *See Matter of Q. Li*, 29 I&N Dec. 66, 67 ("'in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under [INA] section 240."' (emphasis added) (quoting 8 U.S.C. § 1225(b)(2)(A)). "For those placed in expedited removal proceedings who are referred to an Immigration Judge for consideration of their asylum application. . . 8 U.S.C. § 1225(b)(1)(B)(ii), requires detention until the final adjudication of the asylum application." *Q. Li*, 29 I&N Dec. at 68 (citing *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019)). "Likewise, for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section . . . 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" *Q. Li*, 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299).

Thus, his claim that his current detention is without cause and in violation of his constitutional rights to due process of law is without merit and should be dismissed.

V. Petitioner's *Accardi* claim is without merit.

In *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), the Supreme Court established a doctrine—known as the "*Accardi* doctrine"—that generally requires an agency to follow agency regulations. Importantly, the Tenth Circuit, *en banc*, has limited the application of the *Accardi* doctrine to rights-creating "promulgated regulations," not internal agency policies, because internal agency policies "do not give rise to an enforceable right." *Jagers v. Fed. Crop Ins. Corp.*, 758 F.3d 1179, 1186 (10th Cir. 2014) (*en banc*).

Here, Petitioner fails to identify any policy directive that gives rise to an enforceable right under the *Accardi* doctrine. While Petitioner contends that the *Accardi* doctrine applies because ICE subjected Petitioner to unlawful detention, ECF No. 1 at 19-20, he fails to establish that any actual regulation or directive that the agency violated. *RCR Farms, LLC v. Fed. Crop Ins. Corp.*, No. 20-cv-01602-RM, 2021 WL 5449068, at *3 (D. Colo. Nov. 22, 2021) (the *Accardi* doctrine did not apply as "Petitioner cite[d] no promulgated regulations that [the agency] violated"). In sum, the *Accardi* doctrine does not apply.

CONCLUSION

For all these reasons, the Petition should be denied.

DATED this 12th day of September 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which send notification to the following:

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s/ Andrew M. Soler
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