U.S. Department of Justice

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BY ECF

February 9, 2026

Honorable Diane Gujarati
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Jurabek Musinov v. Maldonado, et al.*, Civ. No. 26-628 (Gujarati, J.)

Dear Judge Gujarati:

This Office represents Respondents (or "government") in the above-captioned case in which Petitioner Jurabek Musinov ("Petitioner"), an alien in removal proceedings, filed a petition for a writ of habeas corpus on February 4, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1, Petition ("Pet."). The Court then issued an order requiring Respondents to show cause why the petition should not be granted. The legal issues presented concern the statutory authority for ICE's detention of Petitioner and whether Petitioner is entitled to a bond hearing.

I. Relevant Facts

A. Petitioner Unlawfully Crosses the Border And Is Placed In Removal Proceedings

On or about November 16, 2021, Petitioner unlawfully entered the United States without inspection at or near the Yuma Sector Border Patrol's Area of Responsibility and was encountered by a Border Patrol agent, a component of Customs and Border Protection ("CBP"). Petitioner was initially processed for expedited removal and issued a Notice and Order of Expedited Removal placing him into expedited removal proceedings. *See* Exhibit A; *see also* 8 U.S.C. § 1225(b)(1). After expressing a credible fear of persecution, on November 23, 2021, Petitioner warranted mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), subject to a discretionary release on humanitarian parole, until his forthcoming asylum petition could be determined in removal proceedings.

CBP used its discretion released him on humanitarian parole under 8 U.S.C. § 212(d)(5)(A) (8 U.S.C. § 1182(d)(5)(A) for a limited, fixed period. Exhibit B. As stated on the Interim Notice Authorizing Parole, his parole was valid for one year beginning from November 23, 2021 to November 23, 2022. At the same time that he was granted temporary humanitarian parole, he was also promptly placed into removal proceedings in order to pursue the asylum claim based on his fear of persecution.

In any event, on December 17, 2025, an immigration judge ordered Petitioner removed to Uzbekistan. Exhibit G.[1]

B. ICE Detains Petitioner Pursuant to 8 U.S.C. § 1225(b)(2)(A)

On October 31, 2025, Petitioner was arrested by ICE. ICE transferred him to the Brooklyn Metropolitan Detention Center ("MDC") on November 10, 2025, where he remains. Petitioner is being detained by ICE under 8 U.S.C. § 1225(b)(2)(A). Petitioner has never been lawfully admitted into the United States. Indeed, he has been ordered removed.

II. Petitioner's Habeas Petition

Petitioner argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to him because he had already physically entered the United States and had been present in the United States. *See* Pet. ¶ 20. He claims that he is being detained in violation of 8 U.S.C. § 1226, to which he claims he is subject. *Id.* Petitioner claims that his detention without a custody hearing or prior notice violates due process and his arrest was an unreasonable seizure in violation of the Fourth Amendment. *See* Pet. ¶¶ 21-30. In his prayer for relief, Petitioner, in relevant part, asks that the Court issue a writ of habeas corpus ordering his immediate release. *See* Pet. at 29 (Prayer for Relief).

III. The Court's Decision in *Diallo*

On November 12, 2025, this Court issued a decision in *Diallo v. Maldonado*, a habeas case challenging whether an alien who was never lawfully admitted, but who had previously been released from custody and was present in the country, is subject to mandatory detention under Section 1225, or instead subject to detention under Section 1226(a), which permits bond. *Diallo v. Maldonado*, No. 25-CV-05740, 2025 WL 3158295, at *1 (E.D.N.Y. Nov. 12, 2025).

The Court concluded that it need not resolve the statutory interpretation question of whether Section 1225 or Section 1226(a) applied because, even assuming that Section 1225 applied, the petitioner's detention violated the Due Process clause. *Id.* at *3. In particular, the Court noted that Diallo had previously been released from custody after he was initially apprehended in December 2023 and, based on the fact of that release, concluded that release would have to have been parole under 8 U.S.C. § 1182(d)(5)(A) because that is the sole statutory authority under which an alien subject to Section 1225 may be released. *Id.* at *4-5 (citing *Savane v. Francis*, No. 25-CV-06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.)).[2] The Court further concluded that termination of parole requires written notice to the alien and an individualized

[1] On January 5, 2026, Petitioner timely appealed his removal order to the Board of Immigration Appeals, which appeal remains pending. As such, the removal order is not yet administratively final.

[2] The government respectfully notes that since that time, the Honorable Gregory H. Woods, on whose decision in *Savane,* the *Diallo* decision relies, has last week reached the same conclusion as Respondents advanced in *Diallo*, and found that 1225(b)(2)(A) does apply to instances such as this where, as here, the alien has never been admitted, regardless of whether he has been physically since been present in the United States. *Arana v. Arteta*, No. 1:26-CV-240-GHW, 2026 WL 279786, at *1 (S.D.N.Y. Feb. 3, 2026).

assessment as to whether parole should be terminated. *Id.* citing 8 C.F.R. 212.5(e)(2)(i) and *Savane*, 2025 WL 2774452, at *8. Because those procedures were not provided, the Court conclude that Diallo's detention violated his Fifth Amendment's procedural due process rights and granted the petition. *Id.* at *5.

IV. Discussion

Respondents respectfully submit the Court's decision in *Diallo* does not control this action. Petitioner in this case *was* paroled under Section 1182(d)(5) on November 23, 2021, but that humanitarian parole was explicitly limited in duration to one year, expiring on November 23, 2021. *See* Exhibit B. Humanitarian parole terminates automatically at the expiration of the period for which it is granted, and no new written notice is required. *See* 8 C.F.R. § 212.5(e)(1)(ii).

Per Congress's express instruction in the Immigration and Nationality Act ("INA"), after humanitarian parole expires, the alien is restored to the status that he or she had at the time of parole, and any further inspection or hearing shall be conducted under 8 U.S.C. §§ 1225 or 1229a [INA §§ 235 or 240]. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i). Thus, here, no notice or other procedures were required following the automatic termination of Petitioner's parole in November 2021 and prior to his redetention.

Petitioner's detention under Section 1225 is lawful, and Petitioner's arguments to the contrary, including based on his physical presence in the United States, are unavailing, as set forth below. Since *Diallo,* four different judges on the United States District Court of the Southern District of New York, and the only Circuit Court of Appeals to squarely address the issue so far, the Fifth Circuit, have rejected Petitioner's argument and adopted Respondents' statutory construction.[3]

A. The Text of Section 1225 Contains No Border or Geographic Limitation and Covers Applicants for Admission "Present in the United States"

In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress made numerous changes to the text of the INA. Specifically, as codified at 8 U.S.C. § 1225(a), Congress eliminated a prior distinction between presence and entry, and instead promulgated that "an alien *present* in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission" (emphasis added). Further, Congress defined "admission" with

[3] Respondents acknowledge that a larger number of non-binding court decisions across the country have rejected Respondents' statutory construction. However, as recently explained by the Hon. John L. Sinatra, Jr., W.D.N.Y., "[t]he fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." *Candido v. Bondi, et al.*, 25-cv-867, 2025 WL 3484932 at *2 (Dec. 4, 2025).

Respondents respectfully note that the government has affirmatively appealed the grant of a habeas petition in *Cunha v. Moniz*, 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that Section 1226(a), not Section 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141. The Second Circuit has granted the government's motion to expedite that appeal; briefing is scheduled to be completed by March 3, 2026.

a new modifier: "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). Thus, whereas previously the INA had separated aliens who had "enter[ed]" from aliens who were being inspected at a port of entry, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," all "aliens who have not yet entered" with "aliens who are already present in the United States but did not enter lawfully." *See Xiaoquan Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) ("*Xiaoquan Chen*"), *appeal filed,* 25-3169; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025).

Also codified at § 1225(a)(3), Congress defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission . . . shall be inspected by immigration officers"). (emphasis added).

The statute here makes no exception for the duration of the alien's presence in the country or how far the alien's incursion into the country. Congress knows how to limit the scope of a statute when it wants to. For instance, § 1225(b)(1)(A), for detention related to expedited removals, is explicitly limited by Congress to an alien "who is arriving in the United States." Likewise, § 1225(b)(1)(A)(iii) is limited to an alien who cannot show that he has been physically present in the United States "continuously for the 2-year period immediately prior." There is no such limitation on § 1225(b)(2)(A) detentions. Section 1225, instead, requires mandatory detention of applicants for admission who are not clearly and beyond a doubt entitled to admission, regardless of how long an alien has been unlawfully present in the United States or the alien's distance from the border. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225 places under its ambit those present and not admitted, and such text is where this Court's "analysis" should "begin[] and end[]." *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020).

Here, Petitioner falls squarely within the statutory definition. Petitioner was "present in the United States" when he was arrested and has "not been admitted." Further, Petitioner, who is in removal proceedings, has not established that he is "clearly and beyond a doubt entitled to be admitted." Petitioner "shall," therefore, "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

Multiple courts, including the first U.S. appellate court to rule on the merits of the statutory interpretation question and several district courts in this Circuit, have endorsed this plain application of the statutory text. The Fifth Circuit in *Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496, -- F 4th -- (2026), 2026 WL 323330 (5th Cir. Feb. 6, 2026), concluded that, based on a review of the text, structure, statuary history, and congressional intent, the government's position is correct.

For example, in *Yinxiao Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761, * 1 (S.D.N.Y. Jan. 14, 2026) ("*Yinxiao Chen*"), Judge Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival …).'" *See id.* at *8 (emphasis supplied in *Yinxiao Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together,

Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*

Judge Cronan also showed that other district courts erred in holding that the § 1225(b)(2)(A) detention authority covers only the purported subset of applicants for admission who are "seeking admission" through affirmative steps towards lawful admission. *See Yinxiao Chen*, 2026 WL 100761, at *8-*10. As Judge Cronan held, aliens "seeking admission" are not a subset of "applicants for admission" but rather the opposite is true: "Section 1225 itself expressly treats applicants for admission as among those seeking admission." *See id.* at *9 (citing § 1225(a)(3), (5)). Judge Cronan concluded that such other district court holdings "introduce[] more questions to the statute than answers." *Yinxiao Chen*, 2026 WL 100761, at *9. "The answer," Judge Cronan determined, "is the one that Congress has already provided throughout Section 1225: an applicant for admission is 'seeking admission,' even when that noncitizen is 'present in the United States' without having 'been admitted.'" *Id.*

Similarly, in *Xiaoquan Chen,* 2025 WL 3484855, the alien entered the United States without having been admitted, was released, and remained in the country unlawfully for two years until he was recently detained pursuant to § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Xiaoquan Chen,* 2025 WL 3484855 at *4. Judge Vyskocil reasoned that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5-7; *see also Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); (denying petition on substantially similar grounds as in *Chen*, 2025 WL 3484855); *Candido,* 2025 WL 3484932 at *2) (finding detention under § 1225(b)(2)(A) was proper for alien present unlawfully for two decades without having been admitted, noting that "[t]he fact that more district courts . . . have decided this issue differently from this court is neither binding nor persuasive"); *accord Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) ("[t]he inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225."). *Accord, Arana*, 2026 WL 279786, at *3-5 (Woods, J.) (explaining that the court "finds persuasive the cogent interpretation of the INA's grants of detention authority articulated by Judge Vyskocil in [*Xiaoquan Chen*]").

At bottom, the decisions holding § 1226(a) applicable to an alien present inside the United States prior to their detention have not addressed a critical issue: "How does a court determine when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya*, 2025 WL 3733302, at *2 (W.D. Okla). *Montoya* elaborated:

> Is two years of unadmitted residence long enough? Three? How far must an alien travel from the border? 50 miles? 100? If an alien has been in the interior a short time but resides far away from the border, can the distance make up for a short duration? Or, if an alien lives close to the border but resides in the country for decades, can the time period make up for the short distance?

Id. The BIA has asked a similar question: "If [an alien] is not admitted to the United States . . . but

he is not 'seeking admission[,]' . . . then what is his legal status?" *See Matter of Hurtado*, 29 I. & N. at 221.

It is Congress that has delineated when an alien "seeking admission" is, and is not, an "applicant for admission." Neither the duration of an alien's unlawful presence in the United States nor his distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." *Chen,* 2025 WL 3484855, at *5 (finding that the concerns and arguments about surplusage are misplaced).

B. Imposing a Border Limitation Onto § 1225 Subverts Congressional Intent

An interpretation of the INA that applies § 1225 only at or near the border, and which concludes that it cannot apply to those who are present in the country unlawfully but not near the border, subverts Congress's express goal when it passed IIRIRA of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the [applicable a]ct to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

Before 1996, aliens who attempted to enter the United States by presenting for inspection at a port of entry received less process and were subject to more restrictions than aliens who entered surreptitiously by crossing the border unlawfully. Specifically, under the pre-1996 scheme, aliens at a port of entry who could not demonstrate entitlement to admission were placed in "exclusion proceedings" and were subject to mandatory detention without the possibility of bond. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). In contrast, an alien who evaded inspection and physically entered the United States was placed in "deportation" proceedings and taken into custody under an arrest warrant but could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Thus, whether an alien had physically entered the United States or not – defined at that time as "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994) – "dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.

The pre-1996 INA framework had "unintended and undesirable consequence[s]." *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see Hing Sum*, 602 F.3d at 1100 (similar). "[A]liens who entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, including the right to request release on bond, while aliens who had actually presented themselves to authorities for inspection . . . were subject to mandatory custody." *Hurtado*, 29 I. & N. Dec. at 223 (internal quotations omitted)

Petitioner's statutory interpretation does not address the way it would restore the regime Congress sought to discard: it would require detention for those who present themselves for inspection at the border, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades. That is exactly the "perverse incentive to enter" unlawfully that IIRIRA sought to eradicate. *DHS v.*

Thuraissigiam, 591 U.S. 103, 140 (2020); *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). Such a rule "flies in the face of Congress' decision codified in the IIRIRA, to change the immigration system that had turned on whether "an alien [was] already here," and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry." *Xiaquan Chen,* 2025 WL 3484855, at *5.

C. Supreme Court Precedent Supports, Not Undermines, Respondents' Interpretation of § 1225

Recent Supreme Court precedent does not undermine, and indeed supports, Respondents' position. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).

Jennings involved detention of a U.S. lawful permanent resident who was detained pursuant to § 1226 pending removal following a criminal conviction. 583 U.S. 281. The Supreme Court was tasked with reviewing a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under §§ 1225(b) and 1226 and found that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did *not* delineate the precise groups of aliens subject to § 1225(b) or § 1226(a). *Buenrostro-Mendez*, 2026 WL 323330, at 6. More specifically, the Supreme Court did *not* hold that §1225(b) applies *only* to persons seeking entry to the United States. Instead, the Court held that § 1225(b) "applies *primarily* to aliens seeking entry into the United States," *id.* at 297 (emphasis added), which is consistent with Respondents' position that § 1225(b) also applies, *inter alia*, to persons who have not been admitted to the United States but have been physically present in the United States. *See Yinxiao Chen,* 2026 WL 100761, at **8-12; *Alves de Andrade*, 2025 WL 3252707, at *6. Even more significantly, *Jennings* defined "applicant for admission" in a manner consistent with Respondents' position: "an alien who 'arrives in the United States,' or '*is present' in this country but 'has not been admitted', is treated as 'an applicant for admission.*'" *Jennings*, 583 U.S. at 287 (emphasis added). And, consistent with Respondents' reading, the Supreme Court recognized in its description of § 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287; *see also Yinxiao Chen*, 2026 WL 100761 ("Any broader reading of that language to support Chen's position is misplaced. Supreme Court opinions should not be read to decide issues not squarely presented or even raised to the Court, as the case [was in *Jennings*]"). Nothing in *Jennings* displaces the statute's plain text and the manifest congressional purpose.

Respondents further respectfully submit that the entry-fiction doctrine set forth in *Thuraissigiam* supports their position. The doctrine is consistent with Respondents' interpretation of the statute and legislative history. There, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, 591 U.S. at 139-40. Aliens like Petitioner who are permitted entry into the United States pending their removal are 'treated' for due process purposes '*as if stopped at the border.*'" *Thuraissigiam*, 591 U.S. at 139 (emphasis added). Under this precedent, Petitioner's physical presence in the country is irrelevant, and he should be treated as if stopped at the border, and thus subject to § 1225 mandatory detention.

D. DHS Cannot Be Equitably Estopped From Enforcing the INA

To the extent Petitioner suggests that Respondents should be estopped from detaining him now, because ICE did not detain him earlier and/or because his Form I-200, Warrant for Arrest of Alien, reflects that Petitioner would be detained pursuant to the authority contained in "Section 236" of the INA, he is wrong. "[I]t is well settled that the Government may not be estopped on the same terms as any other litigant." *Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). The Second Circuit has held that the doctrine of equitable estoppel is applied against the Government only "'in the most serious of circumstances' . . . and is applied 'with the utmost caution and restraint.'" *Rojas-Hayes v. INS,* 235 F.3d 115, 126 (2d Cir. 2000) (quotations omitted). To apply estoppel, there must be a showing of "affirmative misconduct" by the Government, as well as reasonable and detrimental reliance. *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994). In particular, a party must establish "*both* that the Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.'" *See Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (citing *Shalala,* 34 F.3d at 1168). Mere negligence is insufficient to show affirmative misconduct. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010).

Petitioner cannot demonstrate any such affirmative misconduct here. *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549 (W.D.N.Y. 2020) is instructive. There, the court concluded that the Government could not be estopped from taking the position that the petitioner, Rodriguez-Figueroa, was subject to detention under § 1225(b) simply because the Government previously treated him as detained pursuant to § 1226(a). *Id.* at 558-59. Rodriguez-Figueroa was detained after being apprehended shortly after unlawfully crossing the border into the United States. *Id.* at 554. He was initially detained under § 1225(b) but later detained under § 1226(a). *Id.* at 558. DHS performed a custody determination pursuant to § 1226 and decided to continue his detention. *Id.* at 554. His NTA classified him as "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien." *Id.* at 558. A Notice of Custody Determination served upon him stated that the determination was made "[p]ursuant to the authority contained in [§ 1226]." *Id.* at 558. The court nevertheless concluded that Rodriguez-Figueroa was at all relevant times detained pursuant to § 1225(b), holding "that an inartfully drafted form, even one that generates confusion, does not rise to anything more than negligence, and thus, is insufficient to estop the Government." *Id.* Other have reached similar conclusions. *See, e.g., Romero v. Bondi*, No. 25-cv-993, 2025 WL 2490659, *2-3 (E.D. Va. July 2, 2025) (holding that form language in a notice of custody determination citing § 1226 did not change the petitioner's status under the law as subject to mandatory detention under § 1225(b), nor did the petitioner's prior release on bond; the petitioner "is still considered an 'applicant for admission' as he has never been admitted into the United States").[4] The Court should hold the same here. Thus, Petitioner here cannot rely on

[4] Respondents respectfully submit that the decisions of some courts in this district, which concluded that references to § 1226 in Government documentation provided to aliens in connection with their processing precluded the Government from lawfully detaining those aliens pursuant to § 1225, were wrongly decided. *See J.U.*, 2025 WL 2772765, at *5; *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *8. These decisions, in effect, equitably estopped the Government from contending that the petitioners were detained under § 1225 without applying the stringent test for equitably estopping the Government. Furthermore, in concluding that DHS treated the petitioners as being detained pursuant to § 1226, some of these decisions incorrectly relied on the fact that DHS did not determine whether the petitioners should be granted parole pursuant to 8 U.S.C. § 1182(d)(5)(A). *See J.U.*, 2025 WL 2772765, at *6; *Artiga*, 2025 WL 2829434, at *7. Nothing in § 1182(d)(5)(A) requires that DHS make such a parole determination for any detainee. Section 1182(d)(5)(A) provides that the "Attorney General *may* [with certain exceptions] in his discretion parole into the United States temporarily . . . an alien applying for admission to the

equitable estoppel to dispute his detention pursuant to § 1225(b).

V. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny this habeas petition. Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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United States . . ." (emphasis added). While § 1182(d)(5)(A) *authorizes* the Attorney General to grant parole to such an alien, the statute does not require that the Attorney General make a determination as to whether such an alien should be paroled, just as it does not require that the alien be paroled. Nor is DHS prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g., United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its error).