

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOHAN JACINTO ARRAIZ PEREZ,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 25 Civ. 5786 (KPF)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION  
TO THE PETITION FOR WRIT OF HABEAS CORPUS**

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Respondents (the “Government”) respectfully submit this memorandum of law in opposition to the petition for writ of habeas corpus filed by petitioner Johan Jacinto Arraiz Perez (“Petitioner”) on July 14, 2025. ECF No. 1 (“Pet.”).

### PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Venezuela who was apprehended by officers of the U.S. Department of Homeland Security (“DHS”) near El Paso, Texas, after he unlawfully entered the United States. Because he is an alien who entered the United States without inspection or admission who was deemed inadmissible at that time, DHS had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a, or to issue an expedited removal order. Due to resource constraints, DHS opted at that time to place Petitioner in Section 1229a removal proceedings and release him in the interim on his own recognizance.

On July 11, 2025, U.S. Immigration and Customs Enforcement (“ICE”) exercised its discretion and opted to revoke his prior release and detain Petitioner under 8 U.S.C. § 1225(b)(2)(A). He was initially held at 26 Federal Plaza for several days pending bedspace approval, and then on July 15, 2025, ICE transferred Petitioner to Orange County Jail (“OCJ”), in Goshen, New York. Petitioner’s removal case remains pending.

In this habeas petition, Petitioner argues that his detention is unlawful because he did not receive sufficient pre-deprivation process prior to his re-detention by ICE and because he will be denied a bond hearing under a Board of Immigration Appeals (“BIA”) decision, *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). He also argues that his detention is unlawful based on the conditions of confinement at 26 Federal Plaza and because he was not permitted sufficient access to legal counsel.

Petitioner's petition should be denied. Because he is in removal proceedings and is detained under Section 1225, Petitioner is subject to mandatory detention, subject to release on discretionary parole. Under Section 1225(b)(2)(A), he is not entitled to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

To the extent the Court determines Petitioner is detained under Section 1226(a), he would be entitled to a bond hearing, if he requests one. In that event, Petitioner must exhaust this administrative remedy available to him before challenging his detention through a habeas petition, as a bond hearing is constitutionally adequate process through which to challenge his detention.

Finally, Petitioner's transfer to OCJ rendered all of his claims related to the conditions at 26 Federal Plaza moot, and they should be dismissed for lack of subject matter jurisdiction. Petitioner's only allegation related to his current facility—that he has been denied access to his legal documents—does not state a claim for a violation of any constitutional right he may have.

## **BACKGROUND**

### **A. Petitioner's Immigration History**

Petitioner is a native and citizen of Venezuela who unlawfully entered the United States on or before December 8, 2023. Declaration of Deportation Officer Michael Charles, dated July 23, 2025 ("Charles Decl.") ¶¶ 3, 4. On December 8, 2023, a Border Patrol Officer with U.S. Customs and Border Protection ("CBP") encountered Petitioner in the vicinity of El Paso, Texas, and arrested and transported him to a facility in El Paso, Texas, for further processing. *Id.* ¶ 4. Petitioner admitted to CBP that he unlawfully entered the United States, was not admitted or paroled, and did not possess valid entry documents. *Id.*

On December 12, 2023, CBP issued and served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him with

removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 5. The NTA advised Petitioner that he was to appear before an immigration judge at 26 Federal Plaza in New York, New York, for a hearing on October 11, 2024. *Id.* After processing, CBP released Petitioner on his own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B). *Id.* ¶ 6.

On January 24, 2024, the NTA was served on the Executive Office for Immigration Review, thereby commencing removal proceedings against Petitioner. *Id.* ¶ 8. On February 29, 2024, prior to his initial master calendar hearing, Petitioner filed an application for relief from removal with the New York Immigration Court. *Id.* ¶ 9.

On October 11, 2024, Petitioner appeared in person without counsel before an immigration judge for an initial master calendar hearing at 26 Federal Plaza in his removal case. *Id.* ¶ 9. At the hearing, Petitioner requested additional time to obtain an attorney, and the immigration judge granted the request and adjourned the hearing to July 11, 2025. *Id.* On July 11, 2025, Petitioner appeared in person without counsel before an immigration judge for a second master calendar hearing at 26 Federal Plaza. *Id.* ¶ 10. At this hearing, Petitioner again requested additional time to obtain an attorney, and the immigration judge granted the request and adjourned the hearing to January 27, 2026. *Id.* After the hearing, ICE took Petitioner into custody pursuant to an administrative warrant and escorted him to ICE's processing space at 26 Federal Plaza. *Id.*

On July 11, 2025, during processing at 26 Federal Plaza, Petitioner was examined by a nurse on staff. When examined, Petitioner stated that he was in good health and was not taking any medication. *Id.* ¶ 11. Due to lack of bedspace for his risk classification at the only detention facility in the Southern District of New York, ICE submitted a bedspace request for Petitioner to

ICE's Detention Operations Coordination Center, through which bedspace is coordinated nationwide. *Id.* Petitioner remained in ICE's processing space at 26 Federal Plaza, pending bedspace approval. *Id.* On July 14, 2025, ICE's bedspace request for Petitioner was approved in Houston, Texas, and Petitioner was scheduled to be transferred to Houston, Texas on July 16, 2025. *Id.* ¶ 12.

On July 15, 2025, Arraiz Perez was instead transferred to OCJ in Goshen, New York, upon bedspace becoming available. *Id.* ¶ 13. Upon arriving at OCJ, Petitioner was examined by the medical staff at the facility, and he continues to have access to medical staff. *Id.* Petitioner also has multiple means of communicating with his attorney. *Id.* He or his attorney may also request access any immigration paperwork held in his property at OCJ. *Id.* ¶ 14.

Petitioner filed his habeas petition in this Court on July 14, 2025, ECF No. 1. In his petition, Petitioner alleges violations of the Due Process Clause of the Fifth Amendment based on his re-detention by ICE and the conditions of confinement at 26 Federal Plaza (Count One); and violation of the Fourth Amendment for his re-detention (Count Two). Pet. ¶¶ 26-34. He also seeks interim release pending adjudication of his petition under *Mapp v. Reno* (Count Three). Pet. ¶¶ 35-37. On July 18, 2025, Petitioner filed an application for an order to show cause, ECF No. 5, and a supporting memorandum of law in support of his habeas petition, ECF No. 5-2 ("Mem.").

#### **B. Legal Background for Aliens Seeking Admission to the United States**

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco*

*Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is known as an “applicant for admission.” All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3). 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); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States for admission. And, relevant here, Section § 1225(b)(2)(A) provides for the inspection of all “other” applicants for admission and states 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 section 240.”<sup>1</sup> 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

## ARGUMENT

### **I. PETITIONER’S CHALLENGES TO HIS DETENTION FAIL**

In Count One, Petitioner argues that his detention violates due process, asserting that he was not accorded any pre-deprivation process related to “whether a change in [his] custody status was warranted.” Pet. ¶ 28. In Count Two, Petitioner argues that his redetention is “unreasonable

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<sup>1</sup> Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings that the Petitioner is currently subject to before the Immigration Court.

and therefore violates the Fourth Amendment.” *Id.* ¶ 34. This claim fails because Petitioner is subject to mandatory detention under Section 1225(b)(2)(A).

**A. Petitioner Is Properly Detained Under 8 U.S.C. § 1225(b)(2)(A)**

In this case, Petitioner’s detention is governed by 8 U.S.C. § 1225. Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A), which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS’s discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), “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 240.” 8 U.S.C. § 1225(b)(2)(A).

In the present case, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory detention requirement. First, Petitioner is an “applicant for admission” to the United States. As described above, an “applicant for admission” is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Second, because Petitioner has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). 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 being admitted or paroled, he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained.

This reasoning is supported by the Supreme Court. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), 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. 8 U.S.C. § 1225(b)(1)(A)(i). 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). Put another way, while Section 1225(b)(1) applies to aliens “arriving” in the United States, Section 1225(b)(2) applies to all “other” aliens who are applicants for admission—like Petitioner. Simply put, an alien does not lose his “applicant for admission” status simply because he was inspected at a time other than his immediate arrival in the United States. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) ... mandates[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin.” (emphasis added)).

Petitioner remains an applicant for admission, notwithstanding his prior release by CBP on his own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B), which allowed his temporary release from detention. It is well-settled that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Applicants for admission are “treated, for constitutional purposes, as if stopped at the border,” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), even if they are paroled into the United States for a limited purpose, *see United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) (“A ‘parolee,’ even though physically in the country, is not regarded as having ‘entered’ and thus has not acquired the full protection of the Constitution.”).

Petitioner was released on his own recognizance—i.e., conditional parole pursuant to Section 1226(a)(2)(B)—after his unlawful entry in December 2023. Petitioner’s release was subsequently revoked on July 11, 2025, and he was arrested pursuant to an administrative arrest warrant. His further release pending the resolution of his removal proceedings has not been authorized by ICE, and thus he remains detained. It is ICE’s position that, after his rearrest, Petitioner is still considered to be an applicant for admission and his detention is subject to Section 1225(b)(2)(A).

To the extent Petitioner claims his detention falls under 8 U.S.C. § 1226(a) and is discretionary simply because he has been placed in full removal proceedings and was released on his own recognizance,<sup>2</sup> his argument is belied by the language of Section 1225(b)(2)(A) itself, which states that the alien “shall be detained for a proceeding under *section 1229a* of this title.” (emphasis added). Moreover, in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), the Board of Immigration Appeals held that mandatory detention under 8 U.S.C. § 1225(b) applies to *all* “applicant[s] for admission,” whether they are placed in expedited removal proceedings or in full removal proceedings under 8 U.S.C. § 1229a. *Id.* at 67-68. And “[o]nce an alien is detained under

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<sup>2</sup> Petitioner cites to *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), for the proposition that “the liberty interest when a person is re-detained in the community is ‘not the same as when someone is caught coming across the border and detained in the nearest facility.’” Mem. at 5 (citing *Saravia*, 280 F. Supp. at 1196). However, *Saravia* involved minors—unaccompanied alien children—who had been placed in the custody of their parents or other sponsor, and then subsequently rearrested. 280 F. Supp. at 1196 (“Given the nature of the liberty deprivation involved, a minor previously placed with a sponsor . . . cannot be rearrested solely on the ground that he is subject to removal proceedings.”). That decision did not announce a general rule that aliens who have been temporarily paroled into the country have a heightened liberty interest. In any event, such a rule would conflict with the Supreme Court’s clear pronouncement to the contrary. See *Thuraissigiam*, 591 U.S. at 139.

section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant.” *Id.* at 71 n.4. Accordingly, because all “other” applicants for admission—like Petitioner—who do not fall under Section 1225(b)(1) and have not demonstrated “clearly and beyond a doubt” that they are entitled to be admitted to United States under Section 1225(b)(2) “shall” be detained, Petitioner’s detention is lawful.

#### **B. Petitioner Is Not Entitled to a Bond Hearing Under Section 1225**

The Supreme 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.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (under the Due Process Clause, applicants for admission have “only those rights regarding admission that Congress has provided by statute”). Here, “the procedure authorized by Congress” in § 1225(b) and related provisions expressly exclude the possibility of a bond hearing. *Mezei*, 345 U.S. at 212.

Among other things, aliens seeking admission may be detained without a bond hearing pending admission or removal. In *Mezei*, the Supreme Court held that an alien’s detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. *Mezei* arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been “permanently

excluded from the United States on security grounds.” *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08.

The Supreme Court held that Mezei’s detention did not “deprive[ ] him of any statutory or constitutional right.” *Id.* at 215. The Court reiterated that “the power to expel or exclude aliens” is a “fundamental sovereign attribute exercised by the Government’s political departments” that is “largely immune from judicial control.” *Id.* at 210. The Court recognized that “once passed through our gates, even illegally,” aliens “may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.” *Id.* at 212. But “an alien on the threshold of initial entry stands on a different footing” than an alien within the United States. *Id.* For aliens seeking admission, “[w]hatever the procedure authorized by Congress is, it is due process.” *Id.*

The procedure Congress has established for applicants for admission like Petitioner does not include the provision of bond hearings. Instead, for applicants for admission such as Petitioner, “if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a.” U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections.<sup>3</sup> *See* 8 U.S.C. § 1229a.

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<sup>3</sup> During removal proceedings, aliens may apply for various forms of relief or protection from removal, such as asylum, withholding of removal, and protection under the Convention Against Torture. *See* 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). The decision whether to order such an alien removed is made by an immigration judge (not an immigration officer). 8 U.S.C. § 1101(b)(4); 8 U.S.C. § 1229a(a)(1). Aliens may obtain continuances during their proceedings for good cause. 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to

But aliens detained under 8 U.S.C. § 1225(b)(2)(A) generally cannot be released from custody during their removal proceedings. The statute mandates detention during the pendency of removal proceedings, and the exclusive means of release for an applicant for admission such as Petitioner is DHS's discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons" or "significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Given this broad general authority over the admission of aliens and the specific procedures that Congress has implemented, there is no basis for this Court to conclude that Petitioner's due process rights extend to include a right to a bond hearing. Notably, Petitioner's habeas petition fails to provide any argument or legal authority in support of such a claim. And the Supreme Court's decisions in *Thuraissigiam* and *Mezei* foreclose any such relief: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*, 345 U.S. at 212; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). Indeed, as Judge Sullivan correctly recognized in a similar case (decided after *Jennings*) involving an applicant for admission, "because the immigration statutes

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the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to "examine the evidence against [them]," "to present evidence," and "to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. §§ 1240.7(a), 1240.46(c). Aliens ordered removed may ask the immigration judge to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They are also informed that they have a right to appeal, 8 U.S.C. § 1229a(c)(5), and they may file an appeal with the BIA, 8 C.F.R. §§ 1003.1(b), 1003.38(a). If an alien appeals and the BIA enters a final removal order, the alien may file a petition for review in a court of appeals, 8 U.S.C. § 1252, and thereafter seek review in the Supreme Court, 28 U.S.C. § 1254(1).

at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here.” *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018). Other judges have held the same. *See, e.g., Gonzales Garcia v. Rosen*, No. 19 Civ. 6327 (EAW), 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20 Civ. 159, 2020 WL 13240240, at \*4-6 (M.D. Ga. Dec. 7, 2020) (“Applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens’ procedural due process rights entitle them only to the relief provided by the INA.”); *Mendez Ramirez v. Decker*, 612 F. Supp. 200, 220-21 (S.D.N.Y. 2020) (Woods, J.) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute); *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014) (“The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings.”).

Moreover, more than a century of precedent from the Supreme Court confirms that applicants for admission are treated differently under the law for due process purposes from other categories of detained aliens. *See, e.g., Zadvydas*, 533 U.S. at 693 (“The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.”). Congress has decided to treat applicants for admission differently, in order to effectuate their exclusion from the United States while considering whether to admit them, by holding them in detention during those ongoing proceedings. Unlike admitted aliens placed in removal proceedings and detained under 8 U.S.C. § 1226, applicants for admission are

“request[ing] a privilege,” *Landon*, 459 U.S. at 32, and therefore “stand[ ] on a different footing,” *Mezei*, 345 U.S. at 212-13. Their lack of entitlement to a bond hearing thus flows logically from their lack of admission to the United States in the first instance. Further, applicants for admission are not foreclosed from any and all possibility of release during their proceedings: they may secure release through discretionary parole. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c). An alien can also agree to his removal, thus bringing his detention during removal proceedings to an end and ordinarily returning him to freedom (albeit abroad). And unlike the detention at issue in *Mezei*, detention under § 1225(b) is inherently temporary and has a discernable endpoint: the conclusion of removal proceedings. *See Jennings*, 583 U.S. at 297 (when proceedings end for applicants for admission placed in removal proceedings, “detention under § 1225(b) must end as well”).<sup>4</sup>

The constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide. In § 1225(b) and related provisions, Congress has afforded applicants for admission a variety of protections, but has excluded the possibility of release pursuant to bond hearings. *See Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Consequently, Petitioner does not have a due process right to be free from mandatory detention, and so the Court should therefore deny Petitioner’s habeas petition.

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<sup>4</sup> The conclusion of removal proceedings is when the proceedings are administratively final. *See, e.g., Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (“An order of removal is ‘final’ upon the earlier of the BIA’s affirmance of the immigration judge’s order of removal or the expiration of the time to appeal the immigration judge’s order of removal to the BIA.” (citing 8 U.S.C. § 1101(a)(47)(B))).

### C. Petitioner's Arrest Does Not Violate the Fourth Amendment

Petitioner's Fourth Amendment claim, Pet. ¶¶ 32-34, should be rejected because the Fourth Amendment has no applicability in the context of an administrative arrest in the immigration context. *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases).

As the Supreme Court explained in *Abel*, there is “overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens such as petitioner.” 362 U.S. at 233. Petitioner's citation to case law dealing with re-arrest in the criminal context, Mem. at 10-11, is similarly inapposite. *Carlson v. Landon*, 342 U.S. 524, 546 (1952) (“[T]he rule in criminal cases is that a warrant once executed is exhausted. This guards against precipitate rearrest.”). Here, Petitioner was initially arrested by CBP in December 2023 and released on his own recognizance, *see* 8 U.S.C. § 1226(a)(2)(B), and DHS may revoke such release and return him to custody, *id.* § 1226(b). Petitioner's argument (Mem. at 11) that re-arrest requires a “change in circumstances,” is unsupported. *See Salvador F.-G. v. Noem*, No. 25 Civ. 0243, 2025 WL 1669356, at \*9 (N.D. Okla. June 12, 2025) (“Nothing in the statute [§ 1226(b)] or the regulation even hints at a change in circumstances requirement.”); *cf. Saravia*, 280 F. Supp. 3d at 1196-97 (“[N]otwithstanding the breadth of [§ 1226(b)'s] statutory language, the [BIA] has recognized an important implicit limitation on DHS's authority. The BIA has held that ‘where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance.’” (emphasis added)).

### II. TO THE EXTENT THE COURT DETERMINES SECTION 1226(A) GOVERNS, PETITIONER MAY CHALLENGE HIS DETENTION VIA A BOND HEARING

Section 1226 “generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal.” *Jennings*, 583 U.S. at 288. Section

1226(a) provides that “an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings);<sup>5</sup> *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).<sup>6</sup>

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<sup>5</sup> Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

<sup>6</sup> In addition to bond, the government may release a noncitizen detained under Section 1226(a) on his own recognizance, which is a form of conditional parole. *See* 8 U.S.C. § 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) (“The respondents were . . . released on their own recognizance pursuant to DHS’ conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]”); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the [government] used the phrase ‘release on recognizance’ as another name for ‘conditional parole’ under § 1226(a).”); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

Even after DHS decides to release an alien, it may “at any time” revoke such release, “rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a “bond hearing”) before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien’s ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Matter of D-J*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, § 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release an alien during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the alien, who “must establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. at 38; *accord Matter of Adeniji*, 22 I. & N. Dec. at 1114. The BIA’s “to the satisfaction” standard is equivalent to a preponderance of the

evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964).<sup>7</sup> If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

In this case, Petitioner was released by CBP on his own recognizance after his unlawful entry in December 2023. He was subsequently arrested pursuant to an ICE administrative warrant on July 11, 2025. To the extent the Court determines his current detention is pursuant to Section 1226(a), then Petitioner would be entitled to a bond hearing in immigration court and may challenge his detention through that administrative process. *Cf. Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299, at \*5-9 (D. Mass. July 7, 2025).

**A. Petitioner May Not Challenge His Detention Through a Habeas Petition Before Exhausting His Administrative Remedies**

To the extent the Court determines Petitioner is detained pursuant to Section 1226(a), Petitioner should be required to exhaust his challenges to his detention in immigration court and at the BIA before bringing those challenges in federal court. While it is true that “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), “[a] habeas petitioner generally must exhaust administrative

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<sup>7</sup> The Second Circuit has not issued a generally applicable rule with respect to the allocation and quantum of the burden of proof at initial Section 1226(a) immigration court bond hearings. Rather, the Second Circuit held only that when an alien demonstrates that his detention has become unreasonably prolonged (in that case, for 15 months) in violation of due process, he is entitled to receive a new bond hearing at which DHS bears the burden of demonstrating by clear and convincing evidence that the alien is either a danger to the community or a flight risk. *See Velasco Lopez*, 978 F.3d at 855.

remedies before seeking federal court intervention,” *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456 (S.D.N.Y. 2010). “Under the doctrine of exhaustion of administrative remedies, ‘a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.’” *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (quoting *Guitard v. United States Sec’y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)); *Foster v. INS*, 376 F.3d 75, 78 (2d Cir. 2004) (“We have been nothing if not clear in requiring that a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.”); *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (a petitioner “must exhaust administrative remedies before raising . . . constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal”); *cf. Ceballos v. Ridge*, No. 04 Civ. 7304 (LAK), 2004 WL 2849604, at \*2 (S.D.N.Y. 2004) (alien’s request for release from custody was unexhausted and would not be considered by district court); *Diaz v. McElroy*, 134 F. Supp. 2d 315, 319-20 (S.D.N.Y. 2001) (claim unexhausted where petitioner failed to appeal custody decision by INS District Director to BIA). Indeed, judicial exhaustion “serves myriad purposes, including limiting judicial interference in agency affairs, conserving judicial resources, and preventing the ‘frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency.’” *See Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998) (citations omitted).

Where the exhaustion requirement is “judicially imposed instead of statutorily imposed,” several exceptions permit courts to excuse a party’s failure to exhaust administrative remedies. Such exceptions include when: “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial

constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (citations omitted). However, “[e]xhaustion is the rule, waiver the exception.” *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992).

In light of the extensive process available to Petitioner—if the Court determines he is detained under Section 1226(a)—his detention challenge is premature. Petitioner, who has been detained for less than two weeks, can seek a custody redetermination with the immigration court. Petitioner argues that he may not get a bond hearing because the Government is “likely to now contend in administrative pleadings that [Petitioner] is ineligible for bond under *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), and that “[m]andatory detention without access to a bond hearing violates her right to due process.” Pet. ¶ 29. But, as stated above, if the Court determines Petitioner is detained under Section 1226(a), then he is entitled to a bond hearing.

In *Valdez v. Joyce*, the court excused the petitioner from exhausting his administrative remedies because he “may not be entitled to a bond hearing,” which would not be the case if the Court determines that Section 1226(a) applies here. 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*1 n.1 (S.D.N.Y. June 18, 2025). As two other judges in this district recently held, those who are detained under Section 1226(a) are required to exhaust their administrative remedies before they may resort to a habeas petition. *See Castillo Lachapel v. Joyce*, 25 Civ. 4693 (JHR), 2025 WL 1685576, at \*3-4 (S.D.N.Y. June 16, 2025); *Capunay Guzman v. Joyce*, 25 Civ. 4777 (RA), 2025 WL 1696891, at \*2-3 (S.D.N.Y. June 17, 2025); *but see Chipantiza-Sisalema, v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at \*3 (S.D.N.Y. July 13, 2025). Were the Court to determine that Section 1226(a) applies, it is entirely speculative that the immigration judge would disregard that decision and apply *Matter of Q. Li*.

Further, none of the exceptions to exhaustion applies here. Although the BIA does not have authority to review the constitutionality of the statute or regulations that it administers (*i.e.*, it cannot strike down the INA or its implementing regulations as unconstitutional), this prohibition does not prevent the BIA from remedying procedural violations, or from establishing rules and guidelines concerning the type and amount of legal process that aliens must receive in immigration proceedings. The BIA may review claims concerning procedural due process and is capable of curing such procedural errors. *See, e.g., United States v. Gonzalez-Roque*, 301 F.3d 39, 47 (2d Cir. 2002) (“while constitutional claims lie outside the BIA’s jurisdiction, it clearly can address procedural defect”); *see also, e.g., Matter of Chirinos*, 16 I. & N. Dec. 276, 277 (BIA 1977) (reviewing bond hearing procedures for fairness); *accord Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994) (holding that allegations of due process violations “are exactly the sorts of procedural errors” the BIA is able to cure).

### **III. PETITIONER’S CLAIMS CONCERNING HIS CONDITIONS OF CONFINEMENT AND ACCESS TO COUNSEL FAIL**

Petitioner alleges that his detention is unlawful based on his conditions of confinement and lack of ready access to counsel while he was initially held in ICE’s holding facility at 26 Federal Plaza. *See* Pet. ¶¶ 11-12, 15-16, 30. The Petition and supplemental declaration, *see* ECF No. 5-4, contain no allegations related to the conditions at OCJ where Petitioner has been detained since July 15, 2025, except that “he is unable to access [his immigration paperwork] at the jail as they are in his property” (as of July 17, 2025). *See* Declaration of Harold Solis (ECF No. 5-4, “Solis Decl.”), ¶ 6. Claims related to the circumstances of Petitioner’s prior detention in 26 Federal Plaza are moot now that he has been transferred to OCJ. And Petitioner’s counsel may request access to his property being held at OCJ.

“The principle that a federal court ‘lacks jurisdiction to consider the merits of a moot case is a branch of the constitutional command that the judicial power extends only to cases or controversies.’” *Chevron Corp. v. Donziger*, 833 F.3d 74, 123 (2d Cir. 2016) (citation omitted). “In order to satisfy the case-or-controversy requirement [of Article III], a party must, at all stages of the litigation, have an actual injury which is likely to be redressed by a favorable judicial decision.” *United States v. Williams*, 475 F.3d 468, 478-79 (2d Cir. 2007). Federal courts have no authority to give an opinion upon a question that is moot as a result of events that occur during the pendency of the action. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *see also Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of Watervliet*, 260 F.3d 114, 118-19 (2d Cir. 2001) (“Whenever mootness occurs, the court . . . loses jurisdiction over the suit, which therefore must be dismissed.”). “To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990). “When the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, a case becomes moot and the Court lacks jurisdiction.” *Freedom Party of New York v. New York State Bd. of Elections*, 77 F.3d 660, 662 (2d Cir. 1996) (internal quotation marks and alterations omitted). “To avoid becoming moot, the controversy must exist at every stage of the proceeding[.]” *Id.* (internal quotation marks and alterations omitted).

“This Circuit has long and consistently held that a plaintiff’s request for declaratory or injunctive relief relating to a correctional facility is moot once plaintiff is transferred or released from the facility.” *Phillips v. Ienuso*, No. 93 Civ. 6027 (Sotomayor, J.), 1995 WL 239062, at \*1 (S.D.N.Y. Apr. 24, 1995) (citing cases, including *Young v. Coughlin*, 866 F.2d 567, 568 n.1 (2d Cir. 1989); *Tawwab v. Metz*, 554 F.2d 22, 23-24 (2d Cir. 1977) and *Mawhinney v. Henderson*, 542

F.2d 1, 2 (2d Cir. 1976)); *accord Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) (“It is settled in this Circuit that a transfer from a prison facility moots an action for injunctive relief against the transferring facility.”); *Pugh v. Goord*, 571 F. Supp. 2d 477, 489 (S.D.N.Y. 2008) (“Where a prisoner has been *released* from prison, his claims for injunctive relief based on the conditions of his incarceration must be dismissed as moot.”) (Sullivan, J.); *Hallett v. N.Y. State Dep’t of Corr. Serv.*, 109 F. Supp. 2d 190, 196 (S.D.N.Y. 2000) (dismissing former prisoner’s claims for injunctive relief on mootness grounds when he was no longer incarcerated) (Chin, J.); *Gadson v. Goord*, No. 96 Civ. 7544 (SS), 1997 WL 714878, at \*3 (S.D.N.Y. Nov. 17, 1997) (same).

In the above cases, the courts have concluded that a claim for injunctive relief regarding conditions of confinement becomes moot once the petitioner is released or transferred from the detention facility because the petitioner is no longer subject to the actions or conditions sought to be enjoined. *See, e.g., Prins*, 76 F.3d at 506; *Mawhinney*, 542 F.2d at 2. This Court should similarly conclude here. Petitioner is not subject to the conditions of confinement that he asserts existed at 26 Federal Plaza. Further, the Petition and supplemental declaration do not include any allegation related to the living conditions at his current facility, OCJ. *See generally* Pet.; Solis Decl.

Petitioner’s allegation that he does not have access to his immigration paperwork, Solis Decl. ¶ 6, does not state a claim for a denial of constitutional rights. Courts have held that the statutory right to counsel in immigration proceedings is violated only where conditions are “tantamount to denial of counsel.” *E.g., Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005). Petitioner does have access to counsel by phone, and he held a call with his counsel in this case on July 17, 2025. *See* Solis Decl. ¶ 2. Moreover, any assertions of possible future difficulties accessing counsel or presenting his case to immigration authorities is entirely speculative; since this action has been filed, the Government has provided information to Petitioner’s counsel as to his

whereabouts and facilitated communications. In addition, Petitioner's counsel may obtain his immigration paperwork by requesting access to his property at OCJ, Charles Decl. ¶ 14, and Petitioner does not allege any active interference with his attempts to access this paperwork. *Cf. Ford v. Deacon*, 793 F. App'x 13, 18 (2d Cir. 2019) (“[P]risoners have a right to meaningful access to the courts and [] prison officials are barred from ‘actively interfering with inmates’ attempts to prepare legal documents.” (quoting *Lewis v. Casey*, 518 U.S. 343, 350 (1996))).

#### **IV. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION OF THE PETITION**

Petitioner also seeks interim release under the Court's inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Pet. ¶¶ 35-37. However, such release is warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Id.* at 230. This standard is “a difficult one to meet,” and the burden is on the petitioner to make the necessary showings. *Id.* No such claims or circumstances are raised here, and immediate release is not necessary to make the habeas remedy effective. As such, *Mapp* release should be denied.

First, for the reasons already discussed, Petitioner has not raised substantial claims. His detention is mandatory under 8 U.S.C. § 1225. Petitioner's claims are no different than those brought by countless aliens who are in removal proceedings, and he does not raise any novel issues concerning the applicability of the immigration laws. *Cf. Ozturk v. Trump*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 1420540, at \*5-\*6 (D. Vt. May 16, 2025) (raising First Amendment retaliation claim regarding the institution of removal proceedings).

Second, Petitioner has not shown extraordinary circumstances. Petitioner argues that “his ongoing confinement in inhumane conditions without access to family or counsel present extraordinary circumstances,” Pet. ¶ 37, but he is no longer in the temporary holding facility of

which he previously complained, and he has access to his counsel in this case, *see* Solis Decl. ¶ 2. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,<sup>8</sup> but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. *See, e.g., United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances “seem to be limited to situations involving poor health or the impending completion of the prisoner’s sentence”). None of these circumstances are present here.<sup>9</sup>

Third, release is not necessary to make the habeas remedy effective in this case. Petitioner can continue to pursue immigration relief in his removal proceedings, and his detention pending

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<sup>8</sup> In *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007), the court did not find extraordinary circumstances because the plaintiff there offered no reason “other than convenience, why his continued detention by the INS would affect th[e] Court’s ultimate consideration of the legal issues presented in his petition for review.” In *Daum v. Eckert*, No. 20-3354, 2021 WL 4057190, at \*2 (2d Cir. Sept. 7, 2021), the court held that COVID-19 was not an extraordinary circumstance warranting bail. Other cases summarily reject assertions of extraordinary circumstances. *See, e.g., Illarramendi v. United States*, 906 F.3d 268, 271 (2d Cir. 2018); *Stolfa v. Holder*, 498 F. App’x 58, 60 (2d Cir. Aug. 16, 2012).

<sup>9</sup> The Petition asserts that Petitioner “suffers from chronic asthma,” Pet. ¶ 12; however, the declaration of Petitioner’s counsel is silent on this issue, *see* Solis Decl. When Petitioner was detained on July 11, 2025, he stated he was in good health, and not taking any medication. Charles Decl. ¶ 11. To the extent Petitioner does have issues with asthma, he has access to medical care at OCJ. *Id.* ¶ 13.

resolution of his removal case is mandatory by law. While Petitioner and his family are undoubtedly affected by his detention, the effects do not require release to make the remedy effective. Moreover, Petitioner has not sought release with the immigration judge, which counsel's against granting immediate release here. *Cf. Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at \*13 (Mar. 2, 2020) (denying release under *Mapp* for habeas petitioner because the petitioner failed to establish the existence of extraordinary circumstances that made the grant of bail necessary to make the habeas remedy effective, given that the court was granting the relief sought in the petition for a bond hearing).

Accordingly, the Court should deny the request for release pending adjudication.

**CONCLUSION**

For the foregoing reasons, the Court should deny the petition for writ of habeas corpus.

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**Certificate of Compliance**

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 8,240 words.