

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PIERRE HYPPOLITE GRAND,
As Next of Friend to

JHON PETER HYPPOLITE,

Petitioner,

v.

LaDEON FRANCIS, et al.

Respondents.

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**RESPONDENTS' OPPOSITION TO THE PETITION FOR
WRIT OF HABEAS CORPUS AND RESPONSE TO THE COURT'S
ORDER TO SHOW CAUSE**

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September 15, 2025

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TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
STATUTORY & REGULATORY BACKGROUND	2
I. “APPLICANTS FOR ADMISSION” AND Detention under 8 U.S.C. § 1225	2
A. Section 1225(b)(1)	3
B. Section 1225(b)(2)	3
II. Detention Under 8 U.S.C. § 1226(a).....	4
FACTUAL AND PROCEDUAL BACKGROUND	4
ARGUMENT	8
I. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225	8
A. Under the Plain Text of § 1225, Petitioner Must be Detained Pending the Outcome of His Removal Proceeding	8
II. PETITIONER’S DETENTION DOES NOT VIOLATE DUE PROCESS	13
III. PETITIONER’S APA CLAIM IS BARRED	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

Federal Cases

<i>Abel v. United States</i> , 362 U.S. 217 (1960).....	13
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	4
<i>Carlson v. Landon</i> , 342 U.S. 524 (1952)	13
<i>Corley v. United States</i> , 556 U.S. 303 (2009).....	12
<i>D.A.V.V. v. Warden, Irwin County Detention Center</i> , No. 20-cv-159, 2020 WL 13240240 (M.D. Ga. Dec. 7).....	15
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	2, 13
<i>Digital Realty Tr., Inc. v. Somers</i> , 583 U.S. 149 (2018).....	11
<i>Fla. Power & Light Co.</i> , 470 U.S. 729 (1985).....	20
<i>Gonzales Garcia v. Rosen</i> , No. 19-cv-6327, 513 F. Supp. 3d 329 (W.D.N.Y. 2021).....	15
<i>Guertin v. United States</i> , 743 F.3d 382 (2d Cir. 2014).....	20
<i>Guzman v. Barr</i> , No. 19-cv-7163, 2021 WL 135909 (S.D.N.Y. Jan. 14, 2021)	18
<i>Guzman</i> , 130 F.3d	15
<i>Heikkila v. Barber</i> , 345 U.S. 229 (1953)	19
<i>Holder</i> , 570 F.3d 99 (2d Cir. 2009).....	16
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018).....	passim
<i>Karczewski v. DCH Mission Valley LLC</i> , 862 F.3d 1006 (9th Cir. 2017)	12
<i>Kordic</i> , 386 F.2d.....	14
<i>Kucana v. Holder</i> , 558 U.S. 233 (2010)	3
<i>Kumar v. Holder</i> , No. 12-cv-5261, 2013 WL 6092707 (E.D.N.Y. Nov. 18, 2013)	18
<i>Lopez Benitez v. Francis et al.</i> , No. 25-cv-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 15, 2025).....	11
<i>Marquez-Reyes v. Garland</i> , 36 F.4th 1195 (9th Cir. 2022)	10
<i>Matter of Lemus-Losa</i> , 25 I. & N. Dec. 734 (BIA 2012).....	10

<i>Matter of Q. Li</i> , 29 I. & N. Dec. 66 (BIA 2025)	3, 19
<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (BIA 2025).....	9, 11, 12, 13
<i>McDonnell v. United States</i> , 579 U.S. 550 (2016).....	10
<i>Mendez Ramirez v. Decker</i> , 612 F. Supp. 200 (S.D.N.Y. 2020).....	15
<i>Ortega-Cervantes v. Gonzales</i> , 501 F.3d	4
<i>Ortega-Lopez v. Barr</i> , 978 F.3d 680 (9th Cir. 2020).....	13
<i>Poonjani v. Shanahan</i> , 319 F. Supp. 3d 644 (S.D.N.Y. 2018)	3
<i>Reno v. Flores</i> , 507 U.S. 292 (1993).....	13
<i>Rodriguez v. Holder</i> , No. 11-cv-2124, 2014 WL 6983401 (E.D.N.Y. Dec. 10, 2014)	18
<i>Salim v. Tryon</i> , No. 13-cv-6659, 2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014)	15
<i>Shaughnessy v. United States ex rel. Mezei</i> , 345 U.S. 206 (1953).	14, 15, 16
<i>Shunaula v. Holder</i> , 732 F.3d 143 (2d Cir. 2013)	17
<i>State of N.Y. v. Trump</i> , 767 F. Supp. 3d 44 (S.D.N.Y. 2025).....	20
<i>States v. Balde</i> , 943 F.3d 73 (2d Cir. 2019).....	14
<i>Thuraissigiam</i> , 591 U.S. 103 (2020).....	8, 16
<i>Torres</i> , 976 F.3d	13
<i>Trump v. J.G.G.</i> , 145 S. Ct. 1003 (2025)	19, 20
<i>United States v. Woods</i> , 571 U.S. 31 (2013)	10
<i>Valdez v. Joyce</i> , 25 Civ. 4627, 2025 WL 1707737 (S.D.N.Y June 18, 2025)	17
<i>Velasco Lopez v. Decker</i> , 978 F.3d 842 (2d Cir. 2020)	2, 13
<i>Wong Wing v. United States</i> , 163 U.S. 228 (1896).....	13
Federal Statutes	
5 U.S.C. § 704.....	20
5 U.S.C. §§ 701.....	2
8 U.S.C. 1229(a)	5

8 U.S.C. § 1101(a)(13).....	2, 11
8 U.S.C. § 1101(a)(13)(A) (2018).....	12, 18
8 U.S.C. § 1101(a)(47)(B)	16
8 U.S.C. § 1182(a)(6).....	9
8 U.S.C. § 1182(d)(5).....	5, 10
8 U.S.C. § 1182(d)(5)(A)	4, 14, 15, 16
8 U.S.C. § 1225.....	i, 1, 2, 8, 9
8 U.S.C. § 1225(a)	8
8 U.S.C. § 1225(a)(1).....	2, 10, 18
8 U.S.C. § 1225(a)(3).....	10, 18
8 U.S.C. § 1225(b)	13, 16
8 U.S.C. § 1225(b)(1)(A).....	5
8 U.S.C. § 1225(b)(2)	1
8 U.S.C. § 1225(b)(2)(A).....	passim
8 U.S.C. § 1226.....	4, 16
8 U.S.C. § 1226(a)	i, 4, 12, 18
8 U.S.C. § 1252(a)(2)(A)	17
8 U.S.C. § 1252(g).....	17
8 U.S.C. § 1229a.....	17
U.S.C. § 1226(a)	4
U.S.C. § 1252(a)(2)(A)	17
§ 1225(b)(1) or § 1225(b)(2).....	3
Federal Regulations	
8 C.F.R. § 235.1	19
8 C.F.R. § 236.1(c)(8)	4

8 C.F.R. §§ 212.5(b).....	15, 16
8 C.F.R. §§ 236.1(d)(1).....	4
8 C.F.R. §§ 1003.1(d)(1).....	9

Other Authorities

Pub. L. No. 104-208.....	13
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Respondents LaDeon Francis and Krist Noem, named in their official capacities, by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Richard K. Hayes, Assistant United States Attorney, of counsel, respectfully submit this memorandum of law in opposition to the Petition for a Writ of Habeas Corpus filed in this case. (“Petition”). Dkt. No. 1 (“Pet.”).

PRELIMINARY STATEMENT

Petitioner, a native and citizen of Haiti, entered the United States unlawfully from Mexico on December 19, 2022. *See* Declaration of Deportation Officer Kevin Samuel dated September 15, 2025, ¶¶3,4. (“Decl.”). United States Customs and Border Protection (“CPB”) conducted a credible fear interview and system checks that revealed Petitioner did not have valid entry documents to enter or reside in the United States. CPB afforded Petitioner the opportunity to make a consular notification, but he declined to do so. *Id.* CBP served Petitioner with the first of several a Notices to Appear (“NTAs”), charging Petitioner with removability pursuant to the Immigration and Nationality Act (“INA”) and paroled him into the country, for a period of one year only. *Id.* ¶4.

Petitioner has not been “admitted” to the United States and remains subject to removal and mandatory detention incident to removal pursuant to the INA, 8 U.S.C. § 1225(b)(2). Decl. ¶¶5,6. Nonetheless, he has had the opportunity to seek admission. Although he did not do so for two years after entering the country unlawfully, he filed applications for Temporary Protected Status and asylum, both of which are pending. He is currently scheduled for an asylum hearing on October 7, 2025. Decl. ¶19. While the outcome of these applications is unknown, there is no doubt that Petitioner has been afforded all process that is due as he seeks admission. This has included access to counsel in his current administrative proceedings.

Under these circumstances, Petitioner is not entitled to release from detention and his application for habeas relief should be denied. He is also not entitled to relief of any kind under the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq. (“APA”), which does not apply as a matter of law.

STATUTORY & REGULATORY BACKGROUND

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal and during the administrative and judicial review of removal orders. *See* 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)). Aliens who have entered the United States without being admitted upon inspection or paroled—known as “applicants for admission”—are subject to mandatory detention.

I. “APPLICANTS FOR ADMISSION” AND DETENTION UNDER 8 U.S.C. § 1225

Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is an “applicant for admission.” 8 U.S.C. § 1225(a)(1) (defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States). And, “admission” is defined not as mere entry, but the “*lawful* entry of an alien into the United States after inspection and authorization by an immigration officer”. 8 U.S.C. § 1101(a)(13) (emphasis added). However long he or she has been in this country, an alien who is present in the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under the “entry fiction,” although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never

having effected entry into the United States. *See, e.g., Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018). All applicants for admission are either subject to § 1225(b)(1) or § 1225(b)(2), both of which require mandatory detention. *Jennings*, 583 U.S. at 287.

A. Section 1225(b)(1)

Congress established an expedited removal process in § 1225(b)(1) so that the Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010). Under this provision, “arriving aliens” and aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation” may be removed from the United States without further hearing or review. 8 U.S.C. § 1225(b)(1)(A)(i), (iii). But, if the alien indicates an intention to apply for asylum or expresses a fear of persecution, immigration officers will refer him for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is detained during 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 persecution, or is “found not to have such a fear,” he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

B. Section 1225(b)(2)

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an applicant for admission “shall be detained” pending 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). The Department

of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole any alien applying for admission to the United States on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

II. DETENTION UNDER 8 U.S.C. § 1226(A)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the United States but are deportable and subject to removal proceedings. Section 1226(a) 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 § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.¹ 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.

FACTUAL AND PROCEDURAL BACKGROUND

In brief, the relevant facts concerning this case are as follows, as more fully set forth in the Samuel Declaration.

Petitioner is a native and citizen of Haiti. On December 19, 2022, United States Customs and Border Protection (“CBP”) encountered Petitioner at the Gateway International Bridge in Brownsville, Texas. Petitioner requested asylum. CBP conducted a credible fear interview of Petitioner and conducted system checks that revealed he was not in possession of valid entry

¹ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d at 1116.

documents to enter or reside in the United States. CBP afforded Petitioner the opportunity to make a consular notification, but he declined. Decl. ¶¶3,4.

That same day, on December 19, 2022, CBP personally served Petitioner with a Notice to Appear (“NTA”) charging him with removability pursuant to the Immigration and Nationality Act (“INA”), § 212(a)(7)(A)(i)(I) due to inadequate documentation at the time of application for admission. Therefore, he was amenable to expedited removal under 8 U.S.C. § 1225(b)(1)(A). CBP opted to issue the NTA to place Plaintiff into removal proceedings under INA § 240, 8 U.S.C. 1229(a). The NTA ordered Petitioner to appear at the New York Immigration Court at 26 Federal Plaza on February 15, 2023. In connection with these removal proceedings, CBP used its discretion under 8 U.S.C. § 1182(d)(5) to parole Petitioner into the United States for one year, which expired on December 18, 2023. Decl. ¶5.

Petitioner was not admitted into the United States; he was only paroled into the United States for a limited period of a year. Decl. ¶6.

On January 15, 2023, ICE served another NTA (the “January 15 NTA”) on Petitioner by regular mail with the same charge of removability pursuant to INA § 212(a)(7)(A)(i)(I) but with a different court on a different date. The January 15 NTA ordered Petitioner to appear at the Varick Street Immigration Court in New York, New York on March 19, 2024. Decl. ¶7.

On January 17, 2023, the Varick Street Immigration Court mailed Petitioner a notice of hearing for an initial master hearing on March 19, 2024. On March 19, 2024, Petitioner appeared *pro se* at the Varick Street Immigration Court in New York, New York for his initial hearing before an immigration judge (“IJ”) who rescheduled that hearing repeatedly. Decl. ¶8.

Meanwhile, on November 13, 2024, Petitioner filed with the IJ a Form I-589, Application for Asylum and for Withholding of Removal (“Form I-589”), seeking asylum, withholding of

removal, and protection under the Convention Against Torture (“CAT”). On December 24, 2024, Petitioner filed with U.S. Citizenship and Immigration Services (“USCIS”) an application for Temporary Protected Status (TPS), which remains pending with USCIS at this time. On April 17, 2025, Petitioner filed a second Form I-589 with the IJ, again seeking asylum, withholding of removal, and CAT. Decl. ¶9.

On July 8, 2025, Petitioner appeared *pro se* at the Varick Street Immigration Court in New York, New York for his initial master hearing. After his hearing, ICE took Petitioner into custody under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(a) and transported Petitioner to ICE’s processing space located at 26 Federal Plaza, New York, NY. Upon arrest, ICE served Petitioner with the following forms: (1) Form I-200 Warrant for Arrest of Alien, (2) I-286 Notice of Custody Determination, (3) Form I-215c Record of Sworn Statement to which Petitioner refused to speak without an attorney and refused to sign the form, (4) Arrested or Detained Foreign Nationals Form where indicated that he did not want his consular officials notified, (5) Online Detainee Locator System Privacy Notice, and (6) Important Information About Section 236(a) Initial Detention Decisions. *See* Exhibits A, B, C, D (true and correct copies of Form I-200, Form I-286, Form I-215c, Arrested or Detained Foreign Nationals Form and Online Detainee Locator System Privacy Notice, respectively, served on Petitioner on July 8, 2025). Decl. ¶¶10,11.

On July 8, 2025, ICE offered Petitioner the Incentivized Voluntary Departure Program. The Incentivized Voluntary Departure Program otherwise known as the CBP Home Self-Departure Program is a voluntary process that allows noncitizens who are in the U.S. without lawful status to submit an “Intent to Depart” electronically. Once submitted, participants may receive assistance with travel logistics and, upon verified arrival in their home country, a financial stipend of \$1,000. Petitioner declined Voluntary Departure. Decl. ¶12.

On July 14, 2025, Petitioner was transferred from the New York City Hold Room at 26 Federal Plaza, New York, New York to MDC in Brooklyn, New York, and was shortly afterward transferred to Federal Bureau of Prisons (“BOP”) facility the Metropolitan Detention Center (“MDC”), which his located in Brooklyn, New York. Decl. ¶13.

On July 16, 2025, the Varick Street Immigration Court scheduled a master hearing by video on July 21, 2025. On that date, Petitioner appeared *pro se* by remote means before the Varick Street Immigration Court in New York, New York for his master hearing. At the master hearing, Petitioner requested and was granted additional time to find an attorney because his family was in the process of retaining counsel on his behalf. Decl. ¶14.

On July 28, 2025, Keiana James, Esq. with the Bronx Defenders filed an electronic G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) with ICE. Petitioner communicated telephonically with his attorney that same day. On August 4, 2025, Petitioner appeared by remote means before the IJ, for his master hearing. Petitioner’s counsel appeared as a “friend of the court” and moved for an adjournment to enter a notice of appearance on behalf of Petitioner. The IJ granted the adjournment and reset the master hearing for August 20, 2025. Decl. ¶15.

On August 5, 2025, Petitioner’s counsel filed with the Varick Street Immigration Court, which is not the same as ICE, a Form EOIR-28 (Notice of Appearance as Attorney or Representative Before Immigration Court). On August 15, 2025, Petitioner and his counsel held another telephonic communication. Decl. ¶16.

On August 20, 2025, Petitioner appeared at the Varick Street Immigration Court, via remote means, this time represented by counsel. At the hearing, Petitioner conceded that he was removable. The IJ sustained the charge of removability, and designated Haiti as the country of

removal. The IJ rejected Petitioner’s Form I-589 as incomplete and, inter alia, instructed Petitioner to cure the deficiencies and re-file the Form I-589 at the next hearing. Decl. ¶17.

On August 22, 2025, Petitioner again participated in a telephonic communication with his counsel. On September 2, 2025, Petitioner filed a Motion to Terminate removal proceedings on the grounds that he was *prima facie* eligible for other forms of relief, including, *i.e.*, TPS and Form I-130, Petition for Alien Relative, that must both be adjudicated by USCIS. He also filed an amended Form I-589, seeking asylum, withholding of removal, and CAT. Decl. ¶18.

On September 3, 2025, Petitioner appeared by video teleconference (“VTC”), represented by counsel, before the IJ, who accepted Petitioner’s Form I-589 as complete and stated that he could renew the motion if, inter alia, TPS is approved, and scheduled the next hearing for October 7, 2025. Decl. ¶19.

On September 4, 2025, new counsel for Plaintiff filed an electronic G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) with ICE. Decl. ¶20. Petitioner remains detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(a). Petitioner has at no time been admitted into the United States. Decl. ¶21.

ARGUMENT

I. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225

A. Under the Plain Text of § 1225, Petitioner Must be Detained Pending the Outcome of His Removal Proceeding

In the present case, Petitioner falls squarely within the ambit of the INA’s mandatory detention requirement, 8 U.S.C. § 1225(b)(2)(A). Petitioner is an “applicant for admission” to the United States as he is present in the United States without having been admitted. 8 U.S.C. § 1225(a); “[A]n alien present in the United States who has not been admitted . . . ’ is deemed ‘an applicant for admission.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (quoting 8 U.S.C. §

1225(a)(1)). As an “applicant for admission,” Petitioner is subject to § 1225(b). Next, because Petitioner has been placed in removal proceedings under § 1229a and has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” his detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). Indeed, Petitioner *cannot* demonstrate that he is “clearly and beyond a doubt entitled to be admitted” because, as someone who is present in the United States without being admitted or currently paroled, he is inadmissible per 8 U.S.C. § 1182(a)(6). Thus, under the plain—and only proper—reading of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A). As the Board of Immigration Appeals (“BIA”)² clearly concluded in no uncertain terms in a decision issued on September 5, 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.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) (explaining the differences among the different statutorily authorities authorizing detention of aliens subject to removal).

This reading of the statute is supported by the Supreme Court. As explained in *Jennings v. Rodriguez*, all “applicants for admission” fall into one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1), on the other hand, applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation and put into expedited removal proceedings. *See* 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

² The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”) “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1) and 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the IJs, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).

specific exceptions not relevant here).” 583 U.S. at 837 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens “arriving” in the United States, § 1225(b)(2) applies to all “other” aliens who are applicants for admission—like Petitioner. In other words, an alien does not lose his “applicant for admission” status simply because he has been residing in the United States since his unlawful entry. 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)).³

Any notion that the phrase “seeking admission” in § 1225(b)(2)(A) limits its scope is unpersuasive. The BIA has long recognized that “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v.*

³ The only means to obtain release for an applicant for admission is through parole. *See* 8 U.S.C. § 1182(d)(5).

Woods, 571 U.S. 31, 45 (2013).

The government respectfully disagrees with reading of § 1225(b)(2)(A) in *Lopez Benitez v. Francis et al.*, No. 25-cv-5937, 2025 WL 2371588, *1 (S.D.N.Y. Aug. 15, 2025). There, the district court reasoned that the ordinary meaning of the words “seeking” and “admission” requires the applicant to actively “be doing something” and used the following analogy. “Someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as the district court already present there.” *Id.* at *7. But this analogy misses the point of a statutorily defined term. 8 U.S.C. § 1101(a)(13) defines “admission” not as mere entry, but the “*lawful* entry of an alien into the United States after inspection and authorization by an immigration officer” (emphasis added). “‘When a statute includes an explicit definition, we must follow that definition,’ even if it varies from a term’s ordinary meaning.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149 (2018) (quotation omitted). Thus, a person who is physically present in the United States without “admission,” as defined in § 1101(a)(13), remains an “applicant for admission.” The *Lopez Benitez* movie theatre analogy therefore fails.

In *Matter of Yajure Hurtado*, the BIA held that the INA requires that all applicants for admission—including who entered the United States without admission or inspection and have been residing in the country for years without lawful status—be subject to mandatory detention for the duration of their immigration proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA rejected the respondent’s argument that because respondent has been residing in the interior of the United States for almost three years, he cannot be considered as “seeking admission” as that phrase is used in § 1225(b)(2)(A):

Aliens, like the respondent, who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an “admission.” *See* INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A) (2018) (defining “admission”). Likewise, being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission. *Id.* at 228.

One of the most basic interpretative canons instructs that a “statute should be construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). If Congress did not want § 1225(b)(2)(A) to apply to “applicants for admission,” then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Any argument that 8 U.S.C § 1226(a) governs Petitioner’s detention, rather than § 1225 is unavailing. Section 1225 narrowly applies only to “applicants for admission.” *See Jennings*, 583 U.S. at 287. Section 1226(a), on the other hand, is more general and applies to aliens who were admitted into the United States but, for one reason or another, are deportable have been placed in removal proceedings, such as aliens who were inspected and admitted into the United States and then convicted of certain crimes or overstayed a valid visa. *Jennings*, 583 U.S. at 288. Because Petitioner falls within the narrower category of “applicant for admission,” the specific detention authority under § 1225 governs over the general authority found at § 1226(a). When there is “an irreconcilable conflict in two legal provisions,” then “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017); *see also Yajure Hurtado*, 29 I&N Dec. at 219 (“[8 U.S.C. § 1226] does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth in ... 8 U.S.C. § 1225(b)(1), (2)”).

Taken together, the plain language of §§ 1225(a) and 1225(b) indicate that applicants for

admission, including those “present” in the United States, are subject to mandatory detention during the pendency of their removal proceedings under § 1225(b)(2).⁴

II. PETITIONER’S DETENTION DOES NOT VIOLATE DUE PROCESS

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore*, 538 U.S. at 523–26; *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). “Detention during removal proceedings is a constitutionally valid aspect of the deportation process.” *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 (“prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings ““would be in vain if those accused could not be held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”).

Petitioner’s detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE

⁴ In addition, Congress’s significant amendment of the immigration laws in the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996), supports the position that “applicants for admission” are properly detained pursuant to 8 U.S.C. § 1225(b). For example, in the IIRIRA, Congress eliminated certain anomalous provisions that favored aliens who illegally entered without inspection, such as Petitioner, over aliens arriving at ports of entry. *Matter of Yajure Hurtado*, 29 I&N Dec. at 223-225 (describing the legislative history of the amendments made by IIRIRA); *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928) (“Congress intended to eliminate the anomaly ‘under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry’”); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301. Having been placed in removal proceedings—setting aside that he was released on parole for a one year period⁵ — Petitioner has been afforded all of the process that he is due, and his continued detention is authorized by law for the duration of those removal proceedings and comports with his limited due process rights under the Constitution as an applicant for admission, as discussed at length *supra*.

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. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). 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

⁵Petitioner remained an applicant for admission, notwithstanding his release on parole. *See, e.g., United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at the border’ for the purposes of immigration law and are treated as applicants for admission into the country.”); *Kordic*, 386 F.2d at 235 (“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.”).

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.*

Congress has established a procedure for the mandatory detention of applicants for admission like Petitioner under 8 U.S.C. § 1225(b)(2)(A). That statute mandates detention during the pendency of removal proceedings, and the exclusive means of release for an applicant for admission such as Petitioner is the DHS’s discretionary parole authority. *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).

The Supreme Court’s decisions in *Thuraissigiam* and *Mezei* foreclose the relief Petitioner seeks because, again, “[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*, 130 F.3d at 66 (the rights of excluded aliens “are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment”); *see also, e.g., Gonzales Garcia v. Rosen*, No. 19-cv-6327, 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-cv-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-cv-6659, 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.”).

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 were not living in the United States and 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; *see also Thuraissigiam*, 591 U.S. at 140 (“an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’”). 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 removal proceedings end for applicants for admission who have been placed in removal proceedings, “detention under § 1225(b) must end as well”).⁶

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 nevertheless mandated detention with only

⁶ Removal proceedings are concluded only 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))).

the possibility of discretionary parole, subject to automatic termination upon expiration. Consequently, Petitioner's detention under § 1225(b) does not violate a due process right, and so the Court should therefore deny the habeas petition.

In this instance, Petitioner specifically claims that he has been denied due process because he has not had the assistance of counsel. *See* Pet. ¶ 21. This is not true. In fact, he has been represented in the most recent administrative proceedings. Decl.18-20. Relying on *Valdez v. Joyce*, 25 Civ. 4627, 2025 WL 1707737 *4 (S.D.N.Y June 18, 2025) (Daniels, J.) Petitioner also claims that he has been denied due process because no circumstances changed prior to his detention, and he did not receive prior notice of changed circumstances.

Valdez incorrectly found that ICE's commencement of expedited removal was an "abuse of process" (when the Plaintiff had been in removal proceedings under 8 U.S.C. § 1229a). Two statutory jurisdiction-stripping provisions preclude district courts from reviewing administrative decisions concerning expedited removal proceedings. First, 8 U.S.C. § 1252(a)(2)(A) deprives courts of jurisdiction to hear challenges to, *inter alia*, "the [Secretary of Homeland Security]'s decision to invoke expedited removal [and her] choice of whom to remove in this manner" and also expressly applies, *inter alia*, to claims asserted under "any other provision of law ... including section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(2)(A) *Shunaula v. Holder*, 732 F.3d 143, 146 (2d Cir. 2013). Second, 8 U.S.C. § 1252(g) separately deprives district courts of subject matter jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) and also expressly applies, to "any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." 8

U.S.C. § 1252(g). The Supreme Court explained in *Reno v. American-Arab Anti-Discrimination Committee* that § 1252(g) was “designed to give some measure of protection” to immigration authorities’ discretionary decisions regarding the commencement of removal proceedings: Congress provided that if those decisions “are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed.” 525 U.S. 471, 485 (1999); *see also id.* at 485 n.9 (“[§]1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion”) *accord, Guzman v. Barr*, No. 19-cv-7163, 2021 WL 135909, at *5 (S.D.N.Y. Jan. 14, 2021) (dismissing, as barred by § 1252(g), Guzman’s claim that the initiation of removal proceedings against him violated his constitutional rights); *Rodriguez v. Holder*, No. 11-cv-2124, 2014 WL 6983401, at *2 (E.D.N.Y. Dec. 10, 2014) (Irizarry, J.) (§ 1252(g) barred Rodriguez’s “challenge to her removal proceedings”); *Kumar v. Holder*, No. 12-cv-5261, 2013 WL 6092707, at *6 (E.D.N.Y. Nov. 18, 2013) (Feuerstein, J.) (§ 1252(g) barred claim that ICE commenced removal proceedings against Kumar as retaliation for his commencing an action in district court).

Moreover, even if the court in *Valdez* were not jurisdictionally barred from reviewing DHS’s determination regarding what removal proceedings to institute, the government respectfully submits that the concomitant premise of that decision -- which analyzed the detention of the alien in that case under 8 U.S.C. 1226(a) -- is incorrect. As noted, pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is “deemed . . . 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 who are applicants for admission and assert a credible fear of persecution, and mandates detention of such aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). And, in any event, also relevant here, §1225(b)(2)(A) 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 section 1229a of this title.” *See* 8 U.S.C. § 1225(b)(2)(A); *see also Matter of Q. Li*, 29 I. & N. Dec. at 68 (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded’”) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 299, 138 S. Ct. 830, 844 (2018)).

III. PETITIONER’S APA CLAIM IS BARRED

The APA is not the proper vehicle for Petitioner’s claims arising out his detention. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), in which claims including due process claims were brought under the APA, the INA, various habeas provisions, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement,” regardless of whether he requests release from confinement, those claims “fall within the ‘core’ of the writ of habeas corpus and must be brought in habeas.” *See J.G.G.*, 145 S. Ct. at 1005 (cleaned up). The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). The claims in this suit constitute a core habeas claim and are not cognizable under the APA.

By its terms, the APA is available only for agency action “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claims are independently barred by this limitation. As noted by Justice Kavanaugh’s concurrence in *J.G.G.*, “[G]iven 5 U.S.C. § 704, which stated that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claims had merit, which they do not, the result would be the same as that in habeas: release from detention.

That said, if this Court were to determine that Petitioner can state a claim under the APA, the remedy associated with the claim should not be Petitioner’s release from detention. “[T]he usual remedy in an APA case is to remand to the agency in order to provide it with an opportunity to cure the identified deficiency.” *State of N.Y. v. Trump*, 767 F. Supp. 3d 44, 85 (S.D.N.Y. 2025); *Fla. Power & Light Co.*, 470 U.S. 729, 744 (1985) (“If the record before the agency does not support the agency action . . . the proper course except in rare circumstances is to remand to the agency for additional investigation or explanation.”); *accord Guertin v. United States*, 743 F.3d 382, 388 (2d Cir. 2014).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Habeas Corpus and grant such other further relief that the Court deems just and proper.

Dated: Brooklyn, New York
September 15, 2025

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CERTIFICATE OF COMPLIANCE

I, Richard K. Hayes, certify that Respondents' Opposition to the Petition for Writ of Habeas Corpus complies with the requirements of Local Rule 7.1(c), in that it contains 6,649 words.

Dated: Brooklyn, New York
September 15, 2025

/s/ Richard K. Hayes
Assistant U.S. Attorney