

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

MARIA JOSE TUMBA HUAMANI,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 25 Civ. 8110 (LJL)

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

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The Government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus filed by petitioner Maria Jose Tumba Huamani (“Petitioner”) on October 1, 2025. Dkt. No. 1.

PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Peru who was apprehended by officers of the U.S. Department of Homeland Security (“DHS”) near Tecate, California in May 2024 after she unlawfully entered the United States. Because she 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 her in the interim on her recognizance.

On September 30, 2025, Petitioner appeared for a master calendar hearing in front of an immigration judge. U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody immediately following that hearing, and she remains detained pending her removal proceedings.

In this habeas petition, Petitioner asserts that her detention violates her substantive and procedural due process rights under the Fifth Amendment and that her re-arrest is unreasonable and violates the Fourth Amendment. She also argues that she is entitled to interim release pending adjudication of the petition.

The petition should be denied. Petitioner argues that the authority for her detention is governed by 8 U.S.C. § 1226(a), a detention statute that allows for bond hearings. But because she is an applicant for admission in removal proceedings, ICE maintains that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), and is thus subject to mandatory detention, subject to release on

discretionary parole. Under Section 1225(b)(2)(A), Petitioner is not entitled to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

To the extent the Court determines that Petitioner is detained under Section 1226(a), she would then be entitled to a bond hearing, if she requests one. In that event, Petitioner should be required to exhaust this administrative remedy before challenging her detention through a habeas petition, as a bond hearing is constitutionally adequate process through which to seek relief from detention under §1226(a).

Finally, Petitioner should not be released pending the adjudication of these proceedings because there are no extraordinary circumstances warranting immediate, interim release.

BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native and citizen of Peru who unlawfully entered the United States on or before May 6, 2024. Declaration of Supervisory Detention and Deportation Officer Christopher Finnie, dated October 14, 2025 ("Finnie Decl.") ¶¶ 3, 4. On May 6, 2024, a Border Patrol Officer with the U.S. Customs and Border Protection ("CBP") encountered Petitioner in the vicinity of Tecate, California. *Id.* ¶ 4. Petitioner was arrested and transported to a border patrol facility for processing. *Id.* Petitioner admitted to CBP that she unlawfully entered the United States and was not inspected by an immigration officer at the time of her entry. *Id.*

On May 7, 2024, CBP issued and served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging her as inadmissible 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. After processing, CBP released Petitioner on her own recognizance by issuing her a Form I-220A. *Id.* ¶ 6.

On that same date, ICE filed the NTA with the Executive Office for Immigration Review, thereby commencing removal proceedings against Petitioner. *Id.* The NTA directed Petitioner to appear for a hearing before an immigration judge on September 30, 2025, in New York, New York. *Id.* On September 30, 2025, Petitioner appeared *pro se* at her first master calendar hearing before an immigration judge in New York, New York. *Id.* ¶ 8. Petitioner was advised of the consequences of failing to appear for future hearings, confirmed her address, instructed that if she moved she must notify the Court within five days of moving, confirmed that her best language was Spanish, and received a list of pro bono attorneys. *Id.* The immigration judge set a future hearing date of May 12, 2026. *Id.*

After the September 30 hearing, ICE took Petitioner into custody and escorted her to ICE's processing space at 26 Federal Plaza, New York, New York and detained her under 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 9. On October 2, 2025, Petitioner was transferred to the South Louisiana ICE Processing Center in Basile, Louisiana where she remains detained as of the date of this filing. *Id.* ¶¶ 11.

Petitioner filed her habeas petition in this Court on October 1, 2025, ECF No. 1 ("Pet."). Petitioner asserts: (1) violations of her substantive due process rights under the Fifth Amendment; (2) violations of her procedural due process rights under the Fifth Amendment; (3) unlawful arrest in violation of the Fourth Amendment; and (4) a violation of the Administrative Procedure Act. Pet. ¶¶ 31-43. She also maintains that she is entitled to interim release pending adjudication of this petition pursuant to *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). *Id.* ¶¶ 44-47.

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 “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 a term of art defined by the INA as “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, 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.”¹ 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

¹ 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.

ARGUMENT

I. PETITIONER’S CHALLENGES TO HER DETENTION FAIL

A. Petitioner is Lawfully Detained Pursuant to Section 1225(b) and Is Not Entitled to a Bond Hearing

Petitioner’s detention is governed by 8 U.S.C. § 1225(b)(2)(A), which mandates that she remain in detention during the pendency of her 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. § 1229a].”

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 she is “clearly and beyond a doubt entitled to be admitted,” her detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Petitioner cannot demonstrate that she is “clearly and beyond a doubt entitled to be admitted” because, as she is present in the United States without being admitted or paroled, she is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that she “shall be” detained pending removal proceedings.

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)—the provision relevant here—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 287. And section 1225(b) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). 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.”).

Petitioner remains an applicant for admission, notwithstanding her prior release by CBP on her own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B), which allowed her temporary release from detention. “[A]n alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), 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) (internal quotation marks omitted), 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 her own recognizance pursuant to section 1226(a)(2)(B) after her unlawful entry in May 2024. Petitioner’s release was subsequently revoked on September 30,

2025, when she was arrested by ICE. Her further release pending the resolution of her removal proceedings has not been authorized by ICE, and thus she remains detained. Thus, ICE still considers Petitioner to be an applicant for admission and her detention after re-arrest is pursuant to section 1225(b)(2)(A).²

As a result, Petitioner is not entitled to a bond hearing. *See Jennings*, 583 U.S. at 297. 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, such as Petitioner, 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,” *Mezei*, 345 U.S. at 212, in section 1225(b) and related provisions expressly excludes the possibility of a bond hearing, and as such, no further process is due.

² Although at least one judge in this District have determined that a similarly situated petitioner’s detention was governed by section 1226 and not section 1225, *see Lopez Benitez v. Francis*, No. 25. Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025). ICE submits that the matter was wrongly decided and respectfully disagrees with the court’s decision.

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.* (quoting *Knauff*, 338 U.S. 544).

Though physically present in the United States, because she was intercepted shortly after her illegal entry and was never admitted into the country, Petitioner is "treated, for constitutional purposes, as if stopped at the border." *Zadvydas*, 533 U.S. at 693; *see also Thuraissigiam*, 591 U.S. at 140 (explaining that an alien who "is detained shortly after unlawful entry" is not treated, for due process purposes, as having "effected an entry" into the United States, but is instead treated

as “on the threshold,” just like “an alien detained after arriving at a port of entry”). Thus, she is entitled to the procedure authorized by Congress, and no more. The procedure Congress has established for applicants for admission like Petitioner does not include any right to a bond hearing. Instead, for applicants for admission such as Petitioner, “if the examining immigration officer determines that [she] 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. §] 1229a.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). 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.³ See 8 U.S.C. § 1229a.

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 its 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

³ 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, e.g., 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 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).

reasons or significant public benefit”); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate). As the Supreme Court has emphasized, “neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297. Petitioner is therefore lawfully detained pursuant to Section 1225(b) and is not entitled to a bond hearing.

B. Petitioner’s Due Process Rights Have Not Been Violated

Because Petitioner is lawfully detained pursuant to Section 1225(b)(2)(A), neither her procedural nor substantive due process rights have been violated. First, with respect to her procedural due process rights, the Supreme Court has made clear that “[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 (citing *Knauff*, 338 U.S. 544); *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 a court in this district correctly recognized in a similar case (decided after *Jennings*) involving an applicant for admission, “because the immigration statutes 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). Another court in this district has held the same. *See Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute). Other judges have agreed. *See, e.g., Gonzales Garcia v. Rosen*, 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 (WLS) (MSH), 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.”); *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413, at *2 (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.”). In the relevant provisions of the INA, 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. Given that the constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide, Petitioner cannot show that she has suffered a procedural due process violation.

Petitioner's detention also does not run afoul of her substantive due process rights. 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.").

Again, Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of her removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301. And Supreme Court precedent forecloses any such relief 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; *see also Mendez Ramirez*, 612 F. Supp. 3d at 220-21. Petitioner's due process claims should therefore be denied.

C. Petitioner’s Arrest Does Not Violate the Fourth Amendment

Petitioner’s Fourth Amendment claim, Pet. ¶¶ 36-39, should also be rejected because the Fourth Amendment has no applicability in the context of an arrest in the immigration context. *Abel*, 362 U.S. at 232-37 (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.” *Id.* at 233. Here, Petitioner was initially arrested by CBP in May 2024 and released on her own recognizance, *see* 8 U.S.C. § 1226(a)(2)(B), and DHS may revoke such release and return her to custody, *id.* § 1226(b). Accordingly, the Fourth Amendment offers no relief to Petitioner.

D. Petitioner’s Detention Does Not Violate the Administrative Procedure Act

Petitioner additionally repackages her habeas challenges as an APA claim. Pet. ¶¶ 40-43. But the APA permits judicial review of agency action only when, *inter alia*, “there is no other adequate remedy in a court.” 5 U.S.C. § 704. The Supreme Court has made clear that where an alien’s claims for relief “‘necessarily imply the invalidity’ of their confinement,” those claims “‘must be brought in habeas” and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *see also id.* at 674 (Kavanaugh, J., concurring) (“[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ . . . habeas corpus, not the APA, is the proper vehicle here.”). For this reason, Petitioner’s APA claim also fails.

II. TO THE EXTENT THE COURT DETERMINES SECTION 1226(a) GOVERNS, PETITIONER MAY CHALLENGE HER 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);⁴ *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)). 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).⁵ Even after DHS decides

⁴ 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 [s]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).

⁵ In addition to bond, the government may release an alien 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’s conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]”); *see also 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).

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 her removal proceedings, the alien may request a post-deprivation 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 status 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, section 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. 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).⁶ 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 her own recognizance after her unlawful entry in May 2024. She was subsequently arrested by ICE on September 30, 2025. To the extent the Court determines her current detention is pursuant to Section 1226(a), rather than Section 1225(b), then Petitioner would be entitled to request a bond hearing in immigration court and may challenge her 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 Should Not Be Permitted to Challenge Her Detention Through a Habeas Petition Before Exhausting Her Administrative Remedies

To the extent the Court determines that Petitioner is detained pursuant to Section 1226(a), Petitioner should be required to exhaust her challenges to her 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), “district courts in this Circuit have recognized such a requirement

⁶ 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 her detention has become unreasonably prolonged (in that case, for 15 months) in violation of due process, she 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.

as a prudential matter,” *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025). “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.”) (internal quotation marks omitted); *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) (internal quotation marks 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). 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 she is detained under Section 1226(a)—her detention challenge is premature. Petitioner can and should seek a custody redetermination with the immigration court.

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 here if the Court determines that Section 1226(a) applies to Petitioner. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *1 n.1 (S.D.N.Y. June 18, 2025). But 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*, 786 F. Supp. 3d. at 864-65; *Capunay Guzman v. Joyce*, 25 Civ. 4777 (RA), 2025 WL 1696891, at *2-3 (S.D.N.Y. June 17, 2025); *but see, e.g., Samb*, No. 25 Civ. 5373 (DEH), 2025 WL 2398831, at *3; *Lopez Benitez*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *14; *Chipantiza-Sisalema, v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025).

Further, none of the exceptions to exhaustion applies here. Petitioner has been detained for approximately two weeks, and there is no indication that she has requested and been denied a bond hearing by an immigration judge. She cannot demonstrate that requesting a bond hearing would be futile⁷ or that it would not provide a genuine opportunity for adequate relief, particularly

⁷ Although the government takes the position that Petitioner’s detention is governed by § 1225(b) and thus no bond hearing is required, were this Court to hold that Petitioner’s decision is governed

if this Court were to determine that she is detained under Section 1226(a). Nor can she avoid the requirement of exhaustion by merely invoking the language of due process. *See, e.g., United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (“‘Due process’ is not a talismanic term which guarantees review in this court of procedural errors correctable by the administrative tribunal.”). In short, Petitioner should be required to exhaust her request for a bond hearing with the immigration court in the first instance if this Court were to determine that she is detained under Section 1226(a). *Cf. Michalski v. Decker*, 279 F. Supp. 3d 487, 496-97 (S.D.N.Y. 2018) (“Because [petitioner’s] bond hearing may provide him with the relief he seeks . . . this Court concludes in the exercise of discretion that [petitioner] must exhaust these avenues before seeking judicial relief.”).

III. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION OF THE PETITION

Petitioner also seeks immediate interim release under the Court’s inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Pet. ¶¶ 45-47. However, such release is warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances that (iii) make the grant of bail necessary to make the habeas remedy effective. *Mapp*, 241 F.3d at 230. The Second Circuit made clear that the power of Article III courts to grant bail for aliens in immigration proceedings is, at most, a “limited one, to be exercised in special cases only.” *Id.* at 226. Such relief is to be granted “only in unusual cases,” and the standard is “a difficult one to

by § 1226(a), then requesting a bond hearing would not be futile because of a judicial determination of Petitioner’s eligibility for such a hearing.

meet.” *Id.* The burden is on the petitioner to make the necessary showings. *Id.* Petitioner has not done so here. As such, *Mapp* release should be denied.

First, for the reasons already discussed, Petitioner has not raised substantial claims. Her detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). Petitioner’s claims are no different than those brought by others in removal proceedings, and she does not raise any novel issues concerning the applicability of the immigration laws. *Cf. Ozturk v. Trump*, 783 F. Supp. 3d 801, 809-10 (D. Vt. 2025) (alien who had formally entered the United States raising First Amendment retaliation claim regarding the institution of removal proceedings).

Second, Petitioner has not shown extraordinary circumstances. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,⁸ 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*

⁸ 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).

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”). And in *Vasquez Salgado v. Francis*, a judge in this district found extraordinary circumstances in a case where the petitioner suffered “severe mental health issues” and based on petitioner’s “status as a transgender female.” No. 25 Civ. 6524 (VEC), 2025 WL 2806757, at *6 (S.D.N.Y. Oct. 1, 2025); *id.* at *8 n.13 (noting the specific “confluence of facts presented” in that matter and that not “all mentally ill ICE detainees or all transgender ICE detainees are entitled to release while their habeas claims are pending”). None of these circumstances are present here.

Third, release is not necessary to make the habeas remedy effective in this case. Petitioner can continue to pursue immigration relief in her removal proceedings. While Petitioner and her family are undoubtedly affected by her detention, the effects do not require immediate, interim release to make the remedy effective. Moreover, Petitioner has not yet sought release with the immigration judge, which counsels against granting immediate release here. And in any event, this Court need not consider interim release at all if it resolves the underlying merits, which the parties are briefing on an expedited schedule. *Cf. Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at *13 (S.D.N.Y. 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.

Dated: New York, New York
October 14, 2025

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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 6,793 words.