UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUBEN ABELARDO ORTIZ-LOPEZ,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 25 Civ. 7985 (KPF)

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

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REGULATION

Respondents respectfully submit this memorandum of law in opposition to the amended petition for a writ of habeas corpus filed by petitioner Ruben Abelardo Ortiz-Lopez ("Petitioner") on October 2, 2025. ECF No. 8.

PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Ecuador who was apprehended by officers of the United States Department of Homeland Security ("DHS") near Rio Grande City, Texas in March 2024, 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. DHS opted at that time to place Petitioner in removal proceedings and to release him on his own recognizance in the interim.

On September 25, 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. The next day, Petitioner was transferred to Moshannon Valley Processing Center ("Moshannon") where he remains detained pending his removal proceedings.

In his amended habeas petition, Petitioner asserts that his detention violates his due process rights under the Fifth Amendment, that his re-arrest is unreasonable and violates the Fourth Amendment, and that ICE's action to detain Petitioner violates the Administrative Procedure Act ("APA"). He also argues that he is entitled to release pending adjudication of his petition.

The petition should be denied. Because he is an applicant for admission in removal proceedings, ICE maintains that Petitioner is detained under section 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 holds that Petitioner is detained under section 1226(a), he would then be entitled to a bond hearing before an immigration judge, if he requests one. In that event, the Court should require Petitioner to exhaust this administrative remedy available to him before entertaining his challenge to his detention through a habeas petition, as a bond hearing is constitutionally adequate process through which to challenge his detention under Section 1226(a).

Finally, Petitioner should not be released pending the adjudication of these proceedings because there are no extraordinary circumstances warranting release, and immediate release is not necessary to make the habeas remedy effective.

BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native and citizen of Ecuador who unlawfully entered the United States on or before March 20, 2024. Declaration of Deportation Officer Joseph Harrington, dated October 7, 2025 ("Harrington Decl.") ¶ 3. On or about March 20, 2024, U.S. Customs and Border Protection ("CBP") encountered Petitioner in the vicinity of Rio Grande City, Texas. *Id.* ¶ 4. Petitioner was arrested and transported to a nearby Border Patrol facility for processing. *Id.*; Return Ex. 1. Petitioner admitted to CBP that at the time of his entry, he was not inspected by an immigration officer. Harrington Decl. ¶ 4; Return Ex. 1.

On March 22, 2024, CBP issued and served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him as inadmissible

under Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 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; Return Ex. 2. The NTA directed Petitioner to appear for a hearing before an immigration judge on December 12, 2024, at 26 Federal Plaza, New York, NY. Harrington Decl. ¶ 7; Return Ex. 2. Petitioner was subsequently released on his own recognizance as a conditional parole pursuant to INA § 1226(a)(2)(B) due to lack of bed space, and he referred to New York Enforcement and Removal Operations for enrollment in the Alternatives to Detention ("ATD") program. Harrington Decl. ¶ 6, Return Ex. 6.

On June 21, 2024, Petitioner missed an in-office check-in. Harrington Decl. ¶ 11. He missed virtual check-ins, tracker calls, and biometric check-ins 20 times between May 29, 2024, and September 25, 2025, in violation of the ATD program rules. *Id.* On June 18, 2024, Petitioner was arrested by the New York Police Department for Third Degree Assault (with intent to cause physical injury), in violation of New York Penal Law § 120.00(1), and Criminal Obstruction of Breathing or Blood Circulation, in violation of New York Penal Law § 121.11. *Id.* ¶ 10. However, Petitioner was never charged. *Id.*

On December 12, 2024, Petitioner appeared *pro se* for his first master calendar hearing before an immigration judge. *Id.* ¶ 12. On September 25, 2025, following Petitioner's second master calendar hearing, ICE revoked Petitioner's order of release on recognizance and took Petitioner into custody at 26 Federal Plaza. *Id.* ¶ 14. During processing on September 25, 2025, ICE conducted a custody determination and determined that Petitioner would be detained without

bond pursuant to INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *Id.* ICE served Petitioner with a Warrant of Arrest, Form I-200. *Id.*; Return Ex. 7.

On September 26, 2025, long-term bedspace was approved for Petitioner at Moshannon in Clearfield County, PA, and he was transferred to the facility on the same day. Harrington Decl. ¶ 15. Petitioner has remained at Moshannon since his initial transfer to the facility. *Id.* ¶ 16.

Petitioner filed his amended habeas petition in this Court on October 2, 2025, ECF No. 8 ("Pet."). Petitioner asserts violations of his due process rights under the Fifth Amendment, and unlawful redetention in violation of the Fourth Amendment and the APA. Pet. ¶¶ 30-42. He also maintains that he is entitled to release pending adjudication of this petition pursuant to *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). *Id.* ¶¶ 43-46.

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).

ARGUMENT

I. PETITIONER'S CHALLENGES TO HIS 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, 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. § 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

[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.

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 detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

This reasoning comports with Supreme Court precedent. 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 his arrest shortly after his illegal entry and his subsequent release by CBP on his own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B), which allowed his temporary release from detention into the interior of the United States. "[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). Under the so-called entry fiction, applicants for admission such as Petitioner 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 his own recognizance pursuant to section 1226(a)(2)(B) after his unlawful entry in March 2024. His release did not constitute an "admission" into the United States. Petitioner's release was subsequently revoked on September 25, 2025, when he was arrested. His further release pending the resolution of his removal proceedings has not been authorized by ICE, and thus he remains detained. Thus, ICE still considers Petitioner to be an applicant for admission and his detention after re-arrest is pursuant to section 1225(b)(2)(A).[2]

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[2] Although at least two judges 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); *Savane v. Francis*, No.

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.

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 214-15. 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

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25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025), ICE submits that the matter was wrongly decided and respectfully disagrees with the court's decision.

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 208-09.

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." *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* (quoting *Knauff*, 338 U.S. at 544).

Though physically present in the United States, because he was intercepted shortly after his illegal entry and was never actually 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, he 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 [he] 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 of an applicant for admission during the pendency of removal proceedings, subject to discretionary under DHS's parole authority. *See Jennings*, 583 U.S. at 300; 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). 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.

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[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).

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

Because Petitioner is lawfully detained pursuant to section 1225(b), neither his procedural nor substantive due process rights have been violated. First, with respect to his 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 Supreme Court precedent 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 detaining them during those ongoing proceedings. Unlike admitted aliens later 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 he has suffered a procedural due process violation.

Petitioner's detention also does not run afoul of his 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 his 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. ¶¶ 35-38, should also be rejected because the Fourth Amendment has no applicability in the context of an immigration arrest. *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 March 2024 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). Accordingly, the Fourth Amendment offers no relief to Petitioner.

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

Petitioner additionally repackages his habeas challenges as an APA claim. Pet. ¶¶ 39-42. 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.*, 145 S. Ct. 1003, 1005 (2025); *see also id.* at 1007 (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 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);[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 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).

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[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).

If DHS determines that an alien should remain detained during the pendency of his 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 v. Landon*, 342 U.S. 524, 534 (1952)). 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 his own recognizance after his unlawful entry in March 2024. He missed virtual check-ins, tracker calls, and biometric check-ins 20 times between May 29, 2024, and September 25, 2025. On June 18, 2024, he was arrested, though never charged, with third degree assault and criminal obstruction of breathing or blood circulation. He was subsequently arrested pursuant to a warrant on September 25, 2025. To the extent the Court determines that Petitioner's 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. *See Capunay Guzman*, 2025 WL 1696891, at *2-3.

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

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[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 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.

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 as a prudential matter," *Castillo Lachapel v. Joyce*, No. 25 Civ. 4693 (JHR), 2025 WL 1685576, at *3 (S.D.N.Y. June 16, 2025) (internal quotation marks omitted). "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) (internal quotation marks 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 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 if the Court holds that section 1226(a) applies here in resolving this matter. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *1 n.1 (S.D.N.Y. June 18, 2025). But as two other courts in this district have recently held, those who are detained under section 1226(a) should be required to exhaust their administrative remedies before they may resort to a habeas petition. *See Castillo Lachapel*, 2025 WL 1685576, at *3-4; *Capunay Guzman v. Joyce*, 25 Civ. 4777 (RA), 2025 WL 1696891, at *2-3 (S.D.N.Y. June 17, 2025); *but see Samb*, 2025 WL 2398831, at *3; *Lopez Benitez*, 2025 WL 2371588, at *14; *Savane*, 2025 WL 2774452, at *3; *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. To date, Petitioner has been detained for approximately two weeks, and there is no indication that he has requested and been

denied a bond hearing by an immigration judge. He cannot demonstrate that requesting a bond hearing would be futile[7] or that it would not provide a genuine opportunity for adequate relief. Nor can he 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, 47 (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 his request for a bond hearing with the immigration court (and any related administrative appeals) in the first instance. *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 release under the Court's inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Pet. ¶¶ 43-46. 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. *Mapp*, 241 F.3d 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.

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[7] Although the government takes the position that Petitioner's detention is governed by § 1225 and thus no bond hearing is required, were this Court to hold that Petitioner's decision is governed by § 1226, then requesting a bond hearing would not be futile because of a judicial determination of Petitioner's eligibility for such a hearing.

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 others in removal proceedings, and he 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 Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d

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[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).

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 his removal proceedings. While Petitioner and his family are undoubtedly affected by his detention, the effects do not require immediate 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
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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 7,059 words.