

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

XIAOQUAN CHEN,

Petitioner,

v.

JUDITH ALMODOVAR, Acting Director of the  
New York City Field Office of Immigration and  
Customs Enforcement, *et al.*,

Respondents.

No. 25 Civ. 8350 (MKV)

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

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Respondents (the “Government”) respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”), filed on behalf of petitioner Xiaoquan Chen (“Petitioner”).

### **PRELIMINARY STATEMENT**

Petitioner is a Chinese national and applicant for admission to the United States. On December 13, 2023, he was apprehended by United States Customs and Border Protection (“CBP”) in or near Tecate, California. Because Petitioner is an alien who illegally entered the United States without inspection or admission and is deemed an inadmissible applicant for admission by statute, the United States Department of Homeland Security (“DHS”) had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a or issue an expedited removal order. DHS opted at that time to place Petitioner in section 1229a removal proceedings and release him in the interim on his own recognizance. On October 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody following a scheduled appointment with ICE at 26 Federal Plaza in Manhattan and subsequently transferred him to detention facilities in New Jersey and then Mississippi, where he remains pending resolution of his removal proceedings.

On October 8, 2025, counsel for Petitioner filed the Petition on his behalf. ECF No. 1. In the Petition, Petitioner asserts that his detention violates the Immigration and Nationality Act (“INA”) and his Fifth Amendment due process rights. The Petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, under precedent from the Board of Immigration Appeals, Petitioner is detained under Section 1225(b)(2)(A) and thus subject to mandatory detention and potential release only on discretionary parole. To the extent the Court determines Petitioner is instead detained pursuant Section 1226(a), as Petitioner asserts, Petitioner

would then be entitled to request a bond hearing, which would afford him sufficient process to contest his detention. Accordingly, the Court should deny the Petition.

### LEGAL BACKGROUND

For more than a century, the immigration laws have authorized immigration officials to arrest aliens subject to removal and detain them during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233-34 (1960). In the INA, Congress has 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)).

Prior to 1996, the INA treated aliens differently based on whether the alien had *physically* “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45-46 (2011) (“Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an ‘exclusion proceeding’ and an alien already here channeled to a ‘deportation proceeding.’”) (citing *Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982)). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2011).

An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.”

*Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Judulang*, 565 U.S. at 45. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA’s prior framework distinguishing between aliens based on physical “entry” had

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

*Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“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”).

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). IIRIRA replaced the focus on physical “entry” with a focus on lawful “admission.” IIRIRA defined “admission” 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) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.”

House Rep. at 226 (emphasis added). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

Post-IIRIRA, 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 it provides for “expedited removal proceedings” in certain circumstances. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). Section 1225(b)(2)(A) provides for the inspection of all “other” applicants for admission, and it 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 [8 U.S.C. §] 1229a.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to temporarily release an applicant for admission “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*; *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole . . . been served,” the “alien shall . . . be returned to the custody from which

he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

In contrast, aliens who are not applicants for admission may (but need not) be detained at the Government’s discretion. Pursuant to 8 U.S.C. § 1226(a), “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). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings.<sup>1</sup> *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings). Under Section 1226(a)(1), “[t]o secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

## FACTUAL BACKGROUND

### I. Petitioner’s Immigration and Detention History

CBP encountered Petitioner in or near Tecate, California, on December 13, 2023, and determined that he had unlawfully entered the United States on or around the same date. *See* Declaration of Supervisory Detention and Deportation Officer Lige Hampton (“Hampton Decl.”) ¶¶ 3-4. On December 15, 2023, CBP served Petitioner with a Notice to Appear (“NTA”), charging

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<sup>1</sup> Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain or authorize bond for aliens under § 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

him with removability under 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, and ordering him to appear before an immigration judge on March 12, 2024. *Id.* ¶ 5; Pet. Ex. A. Petitioner was released on his own recognizance that day due to a lack of available bed space. *Id.* ¶ 5.

On February 28, 2024, Petitioner filed written pleadings in response to the NTA and a defensive Form I-589 application for asylum. Pet. Ex. B; Hampton Decl. ¶ 7. On March 4, 2024, Petitioner filed a motion to consolidate seeking to combine his immigration case with that of his spouse. Hampton Decl. ¶ 8. On March 12, 2024, Petitioner appeared, with counsel, for his first master calendar hearing, at which the immigration judge concluded pleadings and reset the matter for an individual hearing on Petitioner's relief application at a later date. *Id.* ¶ 9. On February 26, 2025, the immigration judge issued a notice scheduling that individual hearing for December 4, 2028. *Id.* ¶ 10. On August 27, 2025, ICE requested that Petitioner report to ICE's office at 26 Federal Plaza in Manhattan on October 8, 2025. *Id.* ¶ 12. On October 8, Petitioner reported to ICE, as directed, and was taken into custody pursuant to 8 U.S.C. § 1225. *Id.* ¶ 13. That day, after processing, Petitioner was transferred to Delaney Hall Detention Facility in Newark, New Jersey. *Id.* ¶ 14. On October 25, 2025, Petitioner was transferred to the Adams County Correctional Center in Natchez, Mississippi, where he remains detained pending his removal proceedings. *Id.* ¶¶ 17-18.

## **II. The Habeas Petition and Procedural Background**

On October 8, 2025, Petitioner filed his Petition. ECF No. 1. On October 30, 2025, Petitioner filed a proposed order to show cause seeking emergency relief. ECF No. 6. On October 30, 2025, the Court ordered the Government to respond to the Petition and the request for emergency relief by November 5, 2025. ECF No. 7.

In the Petition, Petitioner asserts that his re-detention under 8 U.S.C. § 1225 violates the INA because 8 U.S.C. § 1226 "provides that any re-detention must occur pursuant to 'the original

warrant,” and Petitioner was originally detained and released under Section 1226. Pet. ¶¶ 24-25. He also asserts that his detention violates his due process rights under the Fifth Amendment, Pet. ¶¶ 27-28. As ultimate relief, Petitioner requests that the Court enjoin the Government from transferring him away from this district,<sup>2</sup> order the Government to release him from custody on his own recognizance during the pendency of these proceedings, declare that the Government has violated Petitioner’s due process rights and that “his detention is necessarily pursuant to 8 U.S.C. § 1226, and not § 1225,” and award attorney’s fees and costs. *Id.*; Prayer for Relief.

### ARGUMENT

#### **I. Petitioner Is Lawfully Detained Pursuant to Section 1225(b) and Not Entitled to a Bond Hearing**

Contrary to Petitioner’s argument, Pet. ¶¶ 21, 24-25, 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 [8 U.S.C. §] 1229a.”

Petitioner falls within the ambit of Section 1225(b)(2)(A)’s mandatory detention requirement. First, by statute, Petitioner is an “applicant for admission” to the United States because he 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

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<sup>2</sup> This requested relief is moot, as Petitioner has already been transferred out of this district, which has only one detention facility, to long-term bedspace in Mississippi, and returning Petitioner to this district would require transferring a different individual out of the district.

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 charged in his removal proceedings, he is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other than as designated by the Attorney General, and he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to Section 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*, 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—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 id.* 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 argues that Section 1226(a), rather than Section 1225(b), applies, and he was therefore entitled to process before being detained. Pet. ¶¶ 22, 28. Petitioner argues that when he was released by CBP on December 15, 2023, it was “pursuant—on information and belief—to an order of release on recognizance under . . . 8 U.S.C. § 1226” because “such an order is the only

conceivable mechanism by which ICE could have released [him] if indeed he ‘has not been admitted or paroled.’” Pet. ¶ 12 & n.1.<sup>3</sup> However, after IIRIRA, “an 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.’” *Thuraissigiam*, 591 U.S. at 140. Applicants for admission like 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.”). And such applicants for admission are not permitted release under Section 1226.

Petitioner was detained shortly after his unlawful entry in December 2023. Thus, he “cannot be said to have ‘effected an entry,’” *Thuraissigiam*, 591 U.S. at 140, and by statute he is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), treated for constitutional purposes as if stopped at the border. Though Petitioner was released on his own recognizance after his arrest, his status as an applicant for admission has remained unchanged. Petitioner’s release was revoked on

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<sup>3</sup> Some courts, including in this district, have endorsed this argument. *See, e.g., Huamani v. Francis*, No. 25 Civ. 8110 (LJL) (Nov. 4, 2025) (granting habeas petition based on conclusion that petitioner’s detention was pursuant to Section 1226(a) rather than Section 1225(b)(1)); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), ECF No. 30 (Oct. 28, 2025) (same); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), ECF No. 20 (S.D.N.Y. Oct. 19, 2025) (same); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same). DHS respectfully disagrees with those decisions, and notes that other courts have rejected the argument that Section 1226(a) applies in this context. *See Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351, at \*9 (D. Neb. Sept. 30, 2025) (rejecting petitioner’s assertion that he was detained pursuant to Section 1226(a) rather than Section 1225(b)(2)); *Chavez v. Noem*, No. 25 Civ. 02325 (CAB) (SBC), 2025 WL 2730228, at \*5 (S.D. Cal. Sept. 24, 2025) (discussing interplay between Sections 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to Section 1226(a)).

October 8, 2025, when ICE again arrested him. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, he was re-arrested and his detention is mandatory pursuant to Section 1225(b)(2)(A). *See Hurtado*, 29 I. & N. Dec. at 220 (alien who entered without admission or inspection are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they “have been residing in the United States for years without lawful status”).<sup>4</sup>

Petitioner is lawfully detained pursuant to Section 1225(b), and he is not entitled to bond hearing, particularly given the short length of his detention thus far. Because arriving aliens 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)). Here, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Instead, for an applicant for admission, “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 [8 U.S.C. §] 1229a.” 8 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections. *See* 8 U.S.C. § 1229a. The exclusive means of release for an applicant for admission such as Petitioner is DHS’s

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<sup>4</sup> BIA decisions are binding on ICE. *See* 8 C.F.R. § 1003.1(g) (“Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.”).

discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for “urgent humanitarian reasons or significant public benefit”); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Reading Section 1225(b)(2) to mandate detention for any “applicant for admission” is in accordance with the plain meaning of the text as enacted by Congress in IIRIRA. *See Vargas Lopez*, 2025 WL 2780351, at \*9 (denying habeas petition and holding that petitioner was “an alien within the ‘catchall’ scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a”). This reading does not render Section 1226 superfluous as that provision continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See Chavez*, 2025 WL 2730228, at \*5 (observing that “[h]eeding the plain language of the statute . . . does not contradict or render superfluous § 1226, as Petitioners urge,” explaining that “§ 1226 ‘generally governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission’” (quoting *Jennings*, 583 U.S. at 288)). And it maintains the dichotomy prescribed by Congress in IIRIRA by distinguishing between those who effectuate a lawful entry (even if later found removable) and are subject to Section 1226, and those who illegally entered and are statutorily deemed to be applicants for admission subject to Section 1225.

Petitioner’s claim alleging violation of the INA therefore fails.

## **II. Petitioner’s Detention Comports with Due Process**

Because Petitioner is deemed an applicant for admission and thus is treated for constitutional purposes as if stopped at the border, he is lawfully detained pursuant to Section 1225(b), and 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. at 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”).

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 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).

Indeed, as a court in this district recognized in a 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 by detaining them during ongoing proceedings to effectuate their exclusion from the United States while considering whether to admit them. Unlike admitted aliens later placed in removal proceedings and detained under Section 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. 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 for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights. "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.").

Because Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is statutorily mandated, 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, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212. To the extent Petitioner argues that his detention under Section 1225 violates his due process rights because DHS initially detained him under Section 1226, that argument fails because of the intervening BIA decision in *Matter of Hurtado*—a decision binding on ICE that was issued only recently, well after Petitioner's initial arrest. It is settled that agencies may change their interpretations of statutes, provided that they offer a reasoned basis for doing so. *See, e.g., Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a

reasoned explanation for the change.”); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency “is not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation and “[a]n administrative agency is not disqualified from changing its mind”). *Matter of Hurtado* provides a detailed analysis of the INA’s statutory framework and explains why Petitioner’s detention is governed by Section 1225(b)(2)(A).

The Government is aware that another judge in this district has held that noncitizens subject to mandatory detention under Section 1225(b) have a constitutional right to a bond hearing under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), even though *Black* itself involved individuals detained under Section 1226(c). See *Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully submits that the Court should not apply that reasoning here. See *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.”) (quoting 18 Moore’s Federal Practice § 134.02[1] [d] (3d ed. 2011)). As explained above, individuals detained under Section 1225(b)—as opposed to those detained under Section 1226—are treated as stopped at the border, and the Supreme Court has held that Congress defines the amount of process that is “due” for such persons. In *Al-Thuraya*, the Court concluded that this concept, known as the “entry fiction,” is “inapplicable in the context of [the petitioner’s] request for a bond hearing” and instead applies to “the political branches’ authority to legally admit or exclude noncitizens.” *Al-Thuraya*, 2025 WL 2858422, at \*4. But in *Mezei*, the Supreme Court upheld the Attorney General’s detention without a hearing and reversed the district court’s order that he be released on bond. 345 U.S. at 207-08. It was in this context that the Supreme Court explained that “an alien on the threshold of initial entry stands on a different footing: ‘Whatever 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. The entry fiction is not limited to “the political branches’ authority to legally admit or exclude noncitizens,” *Al-Thuraya*, 2025 WL 2858422, at \*4, but instead “runs throughout immigration law.” *Zadvydas*, 533 U.S. at 693 (discussing *Mezei* and noting that the “indefinite detention” of the petitioner on Ellis Island “did not count as entry into the United States” and instead he was “‘treated,’ for constitutional purposes, ‘as if stopped at the border’”). The Government respectfully submits that *Al-Thuraya* did not fully account for this fact.<sup>5</sup>

Petitioner’s due process claim should therefore be denied.

### **III. Should the Court Determine That Petitioner Is Detained Pursuant to Section 1226(a), Petitioner May Challenge His Detention Through a Bond Hearing**

Should this Court determine that Petitioner’s detention is not governed by Section 1225, ICE nevertheless has authority to detain Petitioner pursuant to Section 1226(a), which “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). 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); *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”).

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<sup>5</sup> Additionally, at least one judge in this district addressing a similarly situated petitioner has determined that, even if Section 1225 governs, the petitioner’s due process rights were violated. *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025). DHS submits that the matter was wrongly decided and respectfully disagrees with the court’s decision.

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.” *Guzman Chavez*, 594 U.S. at 527 (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).<sup>6</sup> If 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).

An alien detained pursuant to Section 1226(a) 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 and a determination 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].”).

Thus, to the extent the Court determines that Petitioner’s current detention does not fall within the scope of Section 1225, the Government nevertheless has authority to detain Petitioner

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<sup>6</sup> In addition to bond, the Government may release an alien detainee on his own recognizance under Section 1226(a)(2)(B), which is a form of conditional parole. *See 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).

pursuant to Section 1226(a), and Petitioner may then request a bond hearing for a determination as to whether he presents a danger to others or a risk of flight.<sup>7</sup> See 8 C.F.R. § 1003.19. Such hearing would provide constitutionally sufficient process for Petitioner’s continued detention. See *Velasco Lopez*, 978 F.3d at 855.

To the extent the Court determines that Petitioner is detained pursuant to Section 1226(a), Petitioner should be required to exhaust his administrative remedies through a bond hearing before obtaining relief from a federal court, as Petitioner recognizes. See Pet. ¶ 20. While “[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 as a prudential matter,” *Castillo Lachapel v. Joyce*, 786 F.Supp.3d 860, 864 (S.D.N.Y. 2025) (internal quotation marks omitted) (requiring exhaustion for habeas petitioner detained under § 1226(a)). See also *Capunay Guzman v. Joyce*, 786 F. Supp. 3d 865, 869-71 (S.D.N.Y. 2025) (same); *Fontanelli ex rel. Bernal Garcia v. Francis*, No. 25 Civ. 7115 (JLR), 2025 WL 2773234, at \*5-\*8 (S.D.N.Y. Sept. 29, 2025) (same).

Where the exhaustion requirement is “judicially imposed instead of statutorily imposed,” certain exceptions permit courts to excuse a party’s failure to exhaust administrative remedies, including 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,

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<sup>7</sup> To be clear, in light of *Matter of Hurtado*, a ruling from this Court that Petitioner was detained under Section 1226(a) would be required for him to then request and receive the bond hearing.

“[e]xhaustion is the rule, waiver the exception.” *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992). These exceptions do not apply here, where Petitioner will have access to a bond hearing if the Court determines that his detention is properly under Section 1226(a), not Section 1225. Petitioner should therefore be required to request a bond hearing before an immigration court before this Court grants his release.

### CONCLUSION

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

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November 5, 2025

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**Certificate of Compliance**

Pursuant to Local Civil Rule 7.1(c) and Section III.D of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 6,217 words.