

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

CLAUDIO MARCELO ROCANO
BUESTAN,

Petitioner,

v.

BRIAN MCSHANE, in his official capacity
as Acting Field Director of New York
Immigration and Customs Enforcement, *et*
al.,

Respondents.

No. 25 Civ. 8544 (JGLC)

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

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Respondents (the “Government”) respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”), filed by petitioner Claudio Marcelo Rocano Buestan (“Petitioner”), and in opposition to Petitioner’s request for interim release on bail pursuant to *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), ECF No. 5 (“*Mapp* request”).

PRELIMINARY STATEMENT

Petitioner, a citizen of Ecuador, claims to have lived in the United States for roughly 15 years, but he was never lawfully admitted to the United States. Consequently, he is an applicant for admission. On October 12, 2025, he was encountered for the first time by immigration authorities and arrested by officers of the U.S. Department of Homeland Security (“DHS”) in Newburgh, New York. Because Petitioner is an alien who illegally entered the United States without inspection or admission, DHS placed Petitioner in Section 1229a removal proceedings and decided that he would be detained pending removal proceedings. He is at the Orange County Jail in Goshen, New York, where he remains detained today.

In his habeas petition, Petitioner asserts that his detention violates the Immigration and Nationality Act (“INA”) and his Fifth Amendment substantive and procedural due process rights. The petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2)(A), which provides for mandatory detention and potential release only on discretionary parole by DHS. To the extent the Court determines that Petitioner is instead detained under 8 U.S.C. § 1226(a), as Petitioner argues, Petitioner would then be entitled to renew his request for a bond hearing before an immigration judge, which would afford him sufficient process to contest his detention.

The Court should also deny Petitioner's *Mapp* request. 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

I. Petitioner's Immigration and Detention History

Petitioner, a citizen of Ecuador, allegedly entered the United States illegally in either 2009 or 2010. Pet. ¶ 1; Declaration of Deportation Officer Michael V. Charles ("Charles Decl.") ¶ 6. On August 2, 2019, Petitioner was arrested by the Mount Pleasant Town Police Department on charges of Driving While Intoxicated – 1st Offense, in violation of NYVTL § 1192(3) (a misdemeanor), and Refusal to Take Breath Test, in violation of NYVTL § 1194(1)(B). Charles Decl. ¶ 4 & Gov't Return Ex. C. On August 8, 2019, Petitioner was arraigned on the misdemeanor Driving While Intoxicated charge and eight other traffic infractions. *Id.* The disposition of these charges is currently unknown. *Id.*

On October 12, 2025, U.S. Immigration and Customs Enforcement ("ICE") officers encountered Petitioner in the vicinity of 126 Hudson Avenue, Newburgh, New York while attempting to locate another alien. Charles Decl. ¶ 5. Upon determining that Petitioner was an alien present in the United States without being admitted or paroled, ICE officers arrested Petitioner and transported him to ICE's Newburgh, New York Facility for further processing. *Id.*

While at the Newburgh, New York Facility, an ICE agent advised Petitioner of his administrative rights in removal proceedings, and Petitioner acknowledged understanding his rights. *Id.* ¶ 6. Petitioner admitted to being a citizen and national of Ecuador without the necessary legal documents to enter, pass through, or to remain in the United States and to illegally entering the United States at some point in 2010 through the United States/Mexico border. *Id.* This was Petitioner's first interaction with DHS since he unlawfully entered the United States. *Id.*

On the same day as his arrest, ICE issued and personally served Petitioner with a Notice to Appear (“NTA”), the charging document used to commence removal proceedings, which charged him with removability pursuant to 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 and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), due to inadequate documentation at the time of application for admission. *Id.* ¶ 7 & Gov’t Return Ex. A. The NTA advised Petitioner that he was to appear before an immigration judge at 201 Varick Street, 5th Floor Room 507, New York, New York, for a hearing scheduled for October 21, 2025. *Id.* On October 12, ICE transported Petitioner to Orange County Jail in Goshen, New York, where he remains today. Charles Decl. ¶ 8.

On October 23, 2025, after an adjournment of the October 21 hearing, Petitioner appeared via Webex from Orange County Jail, with counsel and a Spanish interpreter, before an immigration judge for an initial master calendar hearing at Varick Street Immigration Court. *Id.* ¶¶ 9-10. Petitioner requested to make a bond hearing argument. *Id.* ¶ 10. The immigration judge granted the request and adjourned the matter to November 7, 2025, for Petitioner to file a formal bond hearing motion. *Id.*

On November 7, 2025, Petitioner, with counsel, appeared for a hearing before the immigration judge. *Id.* ¶ 11. With respect to Petitioner’s request for bond, the immigration judge denied the request on the basis that the immigration judge lacked jurisdiction to hear Petitioner’s request for bond because he is an applicant for admission subject to detention under 8 U.S.C. § 1225(b)(2)(A). *Id.* On the removal case, Petitioner, through counsel, denied all charges contained in the NTA and sought to suppress the I-213, record of deportable alien, which recorded Petitioner’s unlawful entry into the United States. *Id.* & Gov’t Return Ex. B. The immigration

judge gave Petitioner until November 20, 2025, to file his brief in support of suppression. Charles Decl. ¶ 11. DHS's brief in opposition is due on November 28, 2025. *Id.* The immigration judge adjourned the matter until December 4, 2025. *Id.*

II. The Habeas Petition and *Mapp* Request

On October 15, 2025, Petitioner filed a habeas petition commencing this action. ECF No. 1. On October 17, 2025, the Court ordered the Government to respond to the petition within 30 days and invited Petitioner to submit a separate bail application if he wished. ECF No. 3. On November 10, 2025, Petitioner submitted a *Mapp* request seeking interim release on bail. ECF No. 6.

In the petition, Petitioner argues that Section 1226(a) rather than Section 1225(b)(2)(A) appropriately applies to his detention, Pet. ¶¶ 6-7, 17-31, and that his detention violates his substantive and procedural due process rights under the Fifth Amendment, Pet. ¶¶ 41-50. As ultimate relief, Petitioner requests that the Court order the Government to release Petitioner. *Id.*, Prayer for Relief. In the *Mapp* request, Petitioner argues that the Court should order his release on bail pending a decision on the Petition based on his assertions that the petition raises substantial claims and that extraordinary circumstances make the writ ineffective absent release. ECF No. 6.

ARGUMENT

I. Petitioner's Challenges to His Detention Fail

Petitioner contends that his detention violates the Due Process Clause of the Fifth Amendment and that he is entitled to immediate release. Pet. ¶¶ 41-50. For the reasons set forth below, his claim lacks merit.

A. Petitioner's Detention Is Governed by 8 U.S.C. § 1225(b)(2)(A)

Petitioner's assertion that his detention is governed by 8 U.S.C. § 1226(a), Pet. ¶ 27, is mistaken. Petitioner, who illegally entered and was never permitted entry into the United States on

any terms, is statutorily deemed an applicant for admission whose detention is governed by 8 U.S.C. § 1225(b).

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) (citation omitted).

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 IIRIRA, Pub. L. No. 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., *supra*, 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 Section 1225, an alien present in the United States who has not been admitted is “deemed . . . an applicant for admission.” 8 U.S.C. § 1225(a)(1). 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.” *Id.* § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Applicants for admission fall under two categories, *i.e.*, those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens arriving in the United States who are determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2) is broader and applies to any applicant for admission who an immigration officer determines to be “not clearly and beyond a doubt entitled to be admitted” to the United States (with limited exceptions). *See id.* § 1225(b)(2)(A); *Jennings*, 583 U.S. at 287 (noting that Section 1225(b)(2) is “broader” and “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)”). Under Section 1225(b)(2), if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, detention is mandatory: the statute provides that he or she “*shall be detained for a proceeding under section 1229a.*”¹ *Id.* § 1225(b)(2)(A) (emphasis added).²

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

² That detention authority has long been recognized as a permissible means of ensuring the security of the border and controlling entry into the United States. Indeed, the Supreme Court has rejected a due process challenge to arriving aliens’ detention at the border, explaining that “an alien on the threshold of initial entry stands on a different footing” than an alien within the United States, which

Here, 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 “[a]n alien present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1). Second, Petitioner is “seeking admission” into this country. *Id.* Prior to his arrest on October 12, Petitioner had never been encountered by U.S. immigration officials. Likewise, he was never released on his own recognizance pursuant 8 U.S.C. § 1226, and he has never applied for asylum or any other immigration benefit. Moreover, Petitioner has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Indeed, Petitioner cannot demonstrate that he is “clearly and beyond a doubt entitled to be admitted” because 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. *See* Charles Decl. ¶¶ 6-7 & Gov’t Return Ex. A, and he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner’s detention is governed by 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained pending removal proceedings.

Moreover, Petitioner is an applicant for admission, notwithstanding his presence in the United States. “[A]n alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1) . . .” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *see also* 8 U.S.C. § 1225(a)(1) (deeming “[a]n alien present in the United States who has not been admitted or who arrives in the United States” as an “applicant for admission”). Applicants for admission, such as

justifies detention at the border. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

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).

In his petition, Petitioner alleges that he unlawfully entered the United States in March 2009 (though he told ICE he entered at some point in 2010). Pet. ¶ 1; Charles Decl. ¶ 6. Regardless, Petitioner’s unauthorized physical entrance into the country did not constitute an “admission” into the country. Furthermore, as intended by Congress when it enacted IIRIRA, Section 1225 applies to aliens who are found unlawfully present in the United States. Section 1225(b)(1) is titled “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled” and Section 1225(b)(2) is titled “Inspection of Other aliens.” Section 1225 thus applies to more than just aliens who are stopped at the border prior to making an entry. It also applies where, as here, ICE agents first encounter and arrest the alien after he entered the country illegally. Thus, Petitioner is an applicant for admission who is seeking admission, and his detention is pursuant to Section 1225(b)(2)(A).³

This reasoning comports with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which explains that Section 1225(b)(2)—the provision relevant here—“serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here),” 583 U.S. at 287, and mandates detention, *id.* at 297; *see*

³ Reading 8 U.S.C. § 1225(b)(2) to mandate detention for any “applicant for admission” is in accordance with the plain meaning of the text. *See Vargas Lopez v. Trump*, No. 25 Civ. 526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (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”); *accord Mejia Olalde v. Noem*, No. 25 Civ. 168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025). This reading does not render Section 1226 superfluous. Section 1226 continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See 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)).

also 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court 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 argues that Section 1226(a), rather than Section 1225(b), applies, and he was therefore entitled to an “individualized determination as to factors such as his flight risk or dangerousness.” Pet. ¶¶ 6-7, 17-31, 46. He argues that Section 1226(a) “applies by default to all persons pending a decision on whether the [noncitizen] is to be removed from the United States,” and Section 1225(b), in contrast, “applies to people arriving at U.S. ports of entry or who recently entered the United States.” Pet. ¶¶ 28, 30 (internal quotation marks omitted).⁴ However, Petitioner remains an applicant for admission, notwithstanding his entry into the United States approximately 15 years ago. *See Thuraissigiam*, 591 U.S. at 140; *Zadvydas*, 533 U.S. at 693.

Petitioner was detained when DHS encountered him for the first time in October 2025 after he unlawfully entered the United States in 2009 or 2010. Pet. ¶ 1, Charles Decl. ¶ 6. However, Petitioner’s physical entrance into the country did not constitute an “admission” into the country.

⁴ Some courts, including in this district, have endorsed this argument. *See, e.g., Gonzalez v. Joyce*, Case No. 25 Civ. 8250 (AT), ECF No. 20 (S.D.N.Y. Oct. 19, 2025) (granting habeas petition based on conclusion that petitioner’s detention was pursuant Section 1226(a) rather than Section 1225(b)(1) and therefore ICE was required to make an individualized determination as to whether detention was warranted); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *3-4 (S.D.N.Y. Aug. 13, 2025) (holding that Section 1226(a) rather than Section 1225(b)(1) applied); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (same). ICE respectfully disagrees with those decisions, and notes that other courts have rejected the argument that Section 1226(a) applies in this context. *See Mejia Olalde*, 2025 WL 3131942 (determining that petitioner, who unlawfully entered the United States nearly 40 years ago, was an applicant for admission and subject to detention under Section 1225(b)(2)(A)); *Vargas Lopez*, No. 2025 WL 2780351, at *9 (rejecting petitioner’s assertion that he was detained pursuant to Section 1226(a) rather than Section 1225(b)(2)); *Chavez*, 2025 WL 2730228, at *5 (similar).

Thus, Petitioner is an applicant for admission and his detention is pursuant to Section 1225(b)(2)(A).

B. Petitioner Is Not Entitled to a Bond Hearing

As a result of his mandatory detention, 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*, 459 U.S. 32 (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. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”).

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 emphasized 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.*

Though he was physically present in the United States when he was arrested, because Petitioner entered the United States unlawfully and was never admitted into the country, he is "treated, for constitutional purposes, as if stopped at the border." *Zadvydas*, 533 U.S. at 693. Thus, he is entitled to the procedure authorized by Congress, and no more. And 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, "if the examining immigration officer determines that [the alien] 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 Petitioner numerous procedural protections.⁵ *See* 8 U.S.C. § 1229a.

⁵ 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

Aliens detained under 8 U.S.C. § 1225(b)(2)(A) generally cannot be released from custody during their removal proceedings. The exclusive means of release for an applicant for admission under the statute is the Department of Homeland Security's discretionary parole authority. *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate). 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)(2)(A) and is not entitled to a bond hearing.

C. Petitioner's Detention Comports with Due Process

For similar reasons, Petitioner's claim that his due process rights have been violated is mistaken. Pet. ¶¶ 41-50. Because Petitioner is deemed an applicant for admission who was never permitted to enter the interior, 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

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 also have a right to appeal to the BIA. 8 U.S.C. § 1229a(c)(5); 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).

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”).

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); *see also 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 and detain them during ongoing proceedings in order to more easily effectuate their exclusion from the United States if necessary (and post-IIRIRA, this includes those found in the interior who are present without having been admitted). 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. Their lack of entitlement to a bond hearing thus flows 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. 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 v. Kim*, 538 U.S. 510, 523–26 (2003); *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.”). Accordingly, Petitioner’s due process claims should be denied.

The Government is aware that a judge in this district has recently held that aliens 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). *See Al-Thuraya v. Warden*, No. 25 Civ. 2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully disagrees with that decision, and believes that the decision in *Poonjani* and *Mendez Ramierz*, *see supra* at 14, represent correct readings of the law. Further, *Black* involved an alien who was detained under Section 1226(c), rather than Section 1225(b), and, regardless, the petitioner in *Al-Thuraya* had been detained for significantly longer than the Petitioner in this case. The Government respectfully submits that the Court should not apply such reasoning here to require a bond hearing. *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, aliens 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. *See supra* at 8-16. 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. That is incorrect. The Supreme Court upheld the Attorney General’s detention of Mezei without a hearing and reversed the district court’s order that he be released on bond. *Mezei*, 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.’” *Id.* 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 was wrongly decided.⁶

Petitioner’s due process claims should therefore be denied.

D. Should the Court Determine That Petitioner’s Detention Is Governed By Section 1226(a), Petitioner May Challenge His Detention Through a Bond Hearing

1. Background Regarding Section 1226

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 the Department of Homeland Security (“DHS”) have broad discretion to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to

⁶ Additionally, a judge in this district in a case involving an applicant for admission who had previously been released by DHS pursuant to Section 1226(a) and later detained by ICE, determined that, even if Section 1225 governs, the petitioner’s re-detention violated the petitioner’s due process rights. *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. It is also distinguishable from the facts of this case, as Petitioner was not previously encountered and released by immigration officials.

detain the arrested alien” during the pendency of removal proceedings);⁷ *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) (2020)). 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).⁸ Even after DHS decides to release an alien, it may “at any time” revoke such release, “rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a 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).

⁷ 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).

⁸ 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).

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 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. *See Velasco Lopez*, 978 F.3d at 848. Furthermore, the Board of Immigration Appeals ("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).⁹ 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).

⁹ 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 violation of due process, the alien 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.

2. Petitioner Should Be Required to Exhaust His Request for Release Through a Bond Hearing With An Immigration Judge

If the Court nevertheless determines that Petitioner's current detention is governed by Section 1226(a), the Petitioner would be entitled to receive a bond hearing in immigration court for a determination whether he presents a danger to others or a risk of flight.¹⁰ *See Capunay Guzman v. Joyce*, 786 F. Supp. 3d 865, 870 (S.D.N.Y. 2025). In that event, Petitioner should be required to exhaust his challenges to his detention in immigration court before this Court orders outright release. *See Perez v. Francis*, No. 25 Civ. 8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (in similar case, holding that "the petitioner should first exhaust his remedies through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition").

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,

¹⁰ To be clear, in light of the BIA's decision in *Matter of Yajure Hurtado*, a holding from this Court in Petitioner's individual case that he is detained under § 1226(a) would be required for Petitioner to then request and receive the bond hearing (alternatively, the Court's order could direct that Petitioner receive such a bond hearing).

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, “[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 renew his request for a bond hearing before an immigration court before this Court grants his release. *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.”).

II. Petitioner Should Not Be Released Pending Adjudication of the Petition

Petitioner also seeks interim release under the Court’s inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* ECF No. 5. However, such release is warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Id.* at 230. This standard is “a difficult one to meet,” and the burden is on the petitioner to make the necessary showings. *Id.* No such claims or circumstances are raised here, and immediate release is not necessary to make the habeas remedy effective. As such, *Mapp* release should be denied.

First, for the reasons already discussed, Petitioner has not raised substantial claims. His detention is mandatory under 8 U.S.C. § 1225(b). Petitioner’s claims are no different than those brought by countless aliens who are in removal proceedings, and he does not raise any novel issues

concerning the applicability of the immigration laws. *Cf. Ozturk v. Trump*, 783 F. Supp. 3d 801, 809–10 (D. Vt. 2025) (raising First Amendment retaliation claim regarding the institution of removal proceedings).

Second, Petitioner has not shown extraordinary circumstances. Petitioner argues that his ongoing detention will result in financial, family, and medical hardship. ECF No. 5 at 3-4. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,¹¹ but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. *See, e.g., United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances “seem to be limited to situations involving poor health or the impending completion of the prisoner’s sentence”). None of these circumstances are present here.¹²

¹¹ 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).

¹² Although Petitioner asserts that in May 2025 he went to the emergency room for gastroenterology complications and that an endoscopy scheduled for October 20, 2025, was

Third, interim release is not necessary to make the habeas remedy effective in this case. Indeed, Petitioner has not articulated any reason why his interim release is “necessary to make the habeas remedy effective.” And in *Mapp* itself, the Second Circuit reversed because the “district court neglected to articulate why its grant of bail was ‘necessary to make the habeas remedy effective.’” *Id.* at 226, 230. Petitioner can continue to pursue immigration relief in his removal proceedings, and his detention pending resolution of his removal case is mandatory by law. While Petitioner and his family are undoubtedly affected by his detention, the effects do not require release to make the remedy effective. And if the Court were to grant relief on the merits of the habeas petition—whether by ordering a bond hearing or outright release—there would be no reason to grant interim relief under *Mapp*. *Cf. Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at *13 (S.D.N.Y. Mar. 2, 2020) (“The Court is truly sympathetic to Reid’s situation. However, particularly in light of the fact that the Court is granting the relief sought in Reid’s Petition, Reid has not established the existence of extraordinary circumstances that make the grant of bail necessary to make the habeas remedy effective.”).

Accordingly, the Court should deny the request for interim release pending adjudication of the habeas petition.

canceled due to his detention, ECF No. 5 at 4, Petitioner has access to medical care at OCJ should he need it. Charles Decl. ¶ 8. Further, Petitioner has not raised a claim for deliberate indifference regarding any medical condition or lack of treatment.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of habeas corpus and the request for interim release.

Dated: New York, New York
November 17, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 4.b 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 7,932 words.