UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JHOAN MAZA HERRERA,

Petitioner,

v.

LADEON FRANCIS, in his official capacity as Acting New York Field Office Director for U.S. Immigration and Customs Enforcement, *et al.*,

Respondents.

No. 25 Civ. 8602 (JHR)

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

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(s)**

STATUTES

ERROR:
timeout
OFFENDING COMMAND:
timeout

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(s)**

STATUTES

REGULATIONS

Respondents (the "Government") respectfully submit this memorandum of law in response to the Court's Order to Show Cause dated October 18, 2025, ECF No. 6, and in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petition" or "Pet."), filed on behalf of petitioner Jhoan Maza Herrera ("Petitioner").

PRELIMINARY STATEMENT

Petitioner is a Colombian national and applicant for admission to the United States. Declaration of Deportation Officer Derek Lynch ("Lynch Decl.") ¶ 3. On December 30, 2023, he was apprehended by United States Customs and Border Protection ("CBP") in the El Paso, Texas Border Control Sector. *Id.* ¶ 4. 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 into section 1229a removal proceedings and release him in the interim on his own recognizance. On October 16, 2025, U.S. Immigration and Customs Enforcement ("ICE") took Petitioner into custody following a hearing before an Immigration Judge in Manhattan. *Id.* ¶ 14. On October 17, 2025, Petitioner was transferred to Delaney Hall in Newark, New Jersey, where he remains detained pending his removal proceedings. *Id.* ¶ 16.

On October 17, 2025, Petitioner's wife filed the Petition on his behalf. ECF No. 1. In the Petition, Petitioner asserts that his detention violates his Fifth Amendment due process rights, the Immigration and Nationality Act ("INA"), and the Administrative Procedure Act ("APA"). The Petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, under binding 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 that 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. Further, while Petitioner does not explain the basis for his APA challenge, to the extent he seeks to challenge ICE policies, this habeas petition is not an appropriate vehicle to do so, because immigration detention may be challenged only through habeas corpus, and Petitioner has not identified any specific reason why current ICE policy is arbitrary and capricious. 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)).

Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States or who arrives 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 expedited removal of certain arriving and other aliens deemed inadmissible. 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)

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.[1] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings). Under § 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)).

[1] 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).

FACTUAL BACKGROUND

I. Petitioner's Immigration and Detention History

CBP encountered Petitioner in the El Paso, Texas Border Control Sector on December 30, 2023, and determined that he had unlawfully entered the United States on or around the same date. Lynch Decl. ¶ 4. That same day, CBP served Petitioner with a Notice to Appear ("NTA"), charging 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. *Id.* & Ex. A. Petitioner was released on his own recognizance due to a lack of bedspace. *Id.* ¶ 5.

The Immigration Court in Santa Ana, California, issued a notice for a master hearing on May 22, 2024. *Id.* ¶ 7. On April 24, 2025, Petitioner filed a change of address form notifying the Immigration Court that he had moved to Flushing, New York, and on May 8, 2024, Petitioner filed a motion to change value. *Id.* ¶¶ 9-10. On May 9, 2025, the case was transferred to the New York, New York Immigration Court. *Id.* ¶ 10. On September 23, 2024, Petitioner filed a defensive Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with the Immigration Court. *Id.* ¶ 12.

On October 16, 2025, Petitioner appeared pro se at a master hearing at 26 Federal Plaza. *Id.* ¶ 13. Following that hearing, ICE took Petitioner into custody, and he was transported to the ICE processing space at 26 Federal Plaza. *Id.* ¶ 14. Petitioner was served with a Warrant for Arrest of Alien, Form I-200. *Id.* & Ex. B. The next day, October 17, 2025, Petitioner filed the Petition, commencing this action. ECF No. 1. Later that day, ICE transferred Petitioner to the Delaney Hall Correctional Facility, 451 Doremus Avenue, Newark, New Jersey, where he remains detained. *Id.* ¶ 16. Legal representatives of detainees at Delaney Hall are authorized to visit their clients in person every day of the week, and Delaney Hall allows in-person visits as well as internet video visits for social workers, family, and friends. *Id.* ¶ 17. Petitioner's immigration case was transferred

to the Elizabeth Immigration Court, and a master calendar hearing was scheduled for October 30, 2025. *Id.* ¶¶ 18-19. The hearing proceeded as scheduled on that date and Petitioner's next appearance is scheduled for November 13, 2025. *Id.* ¶ 19.

II. The Habeas Petition and Procedural Background

On October 17, 2025, the Petition was filed commencing this action. ECF No. 1. On October 18, 2025, the Court ordered respondents to show cause by November 3, 2025, as to why the Petition should not be granted. ECF No. 6.

In the Petition, Petitioner asserts that his detention violates his substantive and procedural due process rights under the Fifth Amendment, Pet. ¶¶ 21-22, and that his detention violates the INA and APA, *id.* ¶¶ 23-24. As ultimate relief, Petitioner requests that the Court enjoin the Government from transferring him away from this district pending these proceedings,[2] order the Government to release him from custody on his own recognizance or "under parole, a low bond or reasonable conditions of supervision," 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. ¶ 7, 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

[2] This requested relief is moot, as Petitioner has already been transferred out of this District.

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 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, *see* Ex. A, and he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

This reasoning comports with Supreme Court precedent. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2). *Id.* 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 an "individualized assessment that he posed a flight risk or was a danger to the community." Pet.¶ 7. While Petitioner does not specify the basis for this assertion, his argument may be that section 1225(b) applies only upon a person's arrival at a port of entry, while section 1226(a) applies once the person has been released and present in the United States for some period of time.[3] However, "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.'" *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). 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.").

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[3] 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 to 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 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 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 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 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 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 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)).

Petitioner was detained shortly after his unlawful entry in October 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 near El Paso in October 2023, Lynch Decl. ¶ 5, his status as an applicant for admission has remained unchanged. Petitioner's release was revoked on October 16, 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 Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (aliens 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").[4]

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 § 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

[4] 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.").

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 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 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*, 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; section 1226 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)) .

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 8 U.S.C. § 1226, applicants for admission are "request[ing] a privilege," *Landon v. Plasencia*, 459 U.S. 21, 32 (1982), 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. "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 precedential decision issued only recently, well after Petitioner's arrest and bond hearing. 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" (citation omitted)). *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). *See Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). However, *Black* involved individuals detained under section 1226(c), rather than section 1225(b), and 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, 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. *See supra* at 10-11. 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 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 submits that *Al-Thuraya* did not fully account for this fact.[5]

Finally, Petitioner claims that "ICE also violated [his] right to Due Process when it failed to allow him to contact counsel or provide[] an[] avenue so that he could reach out to counsel or request counsel to file a Habeas Corpus challenging his unlawful detention." Pet. at 3. Petitioner's fiancé filed the Petition on his behalf the day after he was taken into custody, during the brief window when he was detained at 26 Federal Plaza. *See* Lynch Decl. ¶¶ 14-16; ECF No. 1. Within hours of the filing of his Petition, Petitioner was transferred from 26 Federal Plaza to the Delaney Hall Detention Facility in Newark, New Jersey, where he has ample ability to consult with counsel (though he does not appear to have counsel), as well as his family. Lynch Decl. ¶ 17. Petitioner does not allege that, while at 26 Federal Plaza, he sought to contact counsel or was denied the opportunity to do so. Given this, and the fact that he succeeded in having the Petition filed within

[5] 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.

a day of being taken into custody and was almost immediately moved to a facility where he has the ability to access counsel, Petitioner's claim that his due process rights were violated by being denied access to counsel is not plausible.

Petitioner's due process claims 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").

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).[6] If DHS decides to release

[6] 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*,

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 pursuant to section 1226(a), and Petitioner may then request a bond hearing for a determination whether he presents a danger to others or a risk of flight.[7] *See* 8 C.F.R. § 1003.19. Such a 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

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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).

[7] To be clear, in light of *Matter of Hurtado*, a holding from this Court in his individual case that he was detained under § 1226(a) would be required for Petitioner to then request and receive the bond hearing.

obtaining relief from a federal court. 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, "[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.

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

Petitioner additionally asserts that his arrest violated the APA. Pet. ¶¶ 23-24. But the APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. Where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump*

v. J.G.G., 604 U.S. 670, 672 (2025); *see also id.* at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here.").

In any event, Petitioner has not sufficiently alleged any APA violation. Indeed, Petitioner does not provide any explanation as to why his detention purportedly violates the APA. To the extent Petitioner challenges ICE's arrest policy, *see* Pet. ¶ 7, Petitioner has not pointed to any reason why current ICE policy regarding arrests in or near courthouses is unlawful, and the agency has provided reasoning for the policy. *See* Civil Immigration Enforcement Actions in or Near Courthouses (May 27, 2025), https://www.ice.gov/doclib/foia/policy/11072.4.pdf; *Afr. Communities Together v. Lyons*, No. 25 Civ. 6366 (PKC), 2025 WL 2633396, at *21 (S.D.N.Y. Sept. 12, 2025). Indeed, Judge Castel recently held in an APA case challenging the policy that "plaintiff . . . failed to show a probability of success that the January and May ICE Courthouse Arrest Policies are arbitrary, capricious or otherwise not in accordance with law." *Afr. Communities Together*, 2025 WL 2633396, at *22. For these reasons, Petitioner's APA claim also fails.

CONCLUSION

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

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November 3, 2025

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 5.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 6,108 words.