

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ARNOLDO RIVERA ESPERANZA,

Petitioner,

-against-

LADEON FRANCIS, in his official capacity as
Acting Field Office Director of New York
Immigration and Customs Enforcement, KRISTI
NOEM, in her official capacity as Secretary of
Homeland Security, and PAM BONDI, in her
official capacity as Attorney General,

Respondents.

Case No. 25 Civ. 8727 (RA)

**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 response to the Amended Order to Show Cause dated October 22, 2025, ECF No. 6, and in opposition to the Petition for a Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”), filed on behalf of pro se petitioner Oscar Arnaldo Rivera Esperanza (“Petitioner”) by his sister, Yosselin Liliana Rivera Esperanza.

PRELIMINARY STATEMENT

Petitioner, a citizen and native of El Salvador, is deemed by statute an applicant for admission to the United States. In December 2023, he was apprehended by United States Customs and Border Protection (“CBP”) in the El Paso, Texas Border Patrol Sector. Because Petitioner is an alien who illegally entered the United States without inspection or admission and is inadmissible, 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 21, 2025, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody in a temporary holding space after he appeared for an appointment with ICE. On October 21, 2025, shortly after midnight, Petitioner was transferred to longer-term housing at Delaney Hall in Newark, New Jersey, where he remains detained pending his removal proceedings. The following day, the Court issued an order directing, *inter alia*, that “Petitioner shall not be removed from the United States unless and until the Court orders otherwise.” ECF No. 6.

A *pro se* habeas petition initiating this action was filed on October 21, 2025, and docketed the following day. ECF No. 1. In the Petition, Petitioner asserts that his detention violates his Fifth Amendment due process rights and his rights under the Immigration and Nationality Act (“INA”).

The Petition should be denied. *First*, any claim that Petitioner’s detention violates the INA fails given that 8 U.S.C. § 1225(b)(2)(A) – which is part of the INA – mandates Petitioner’s detention. Petitioner, who is statutorily deemed an applicant for admission and is in removal proceedings, falls squarely within the scope of section 1225(b)(2)(A). *Second*, because Congress provides all the process that is due for noncitizens subject to section 1225(b)(2)(A), and because the statute does not provide a path for release on bond or on some other individualized assessment of the alien by the relevant DHS officer, Petitioner’s due process claims fail. Finally, to the extent the Court determines Petitioner is instead detained pursuant 8 U.S.C. § 1226(a), Petitioner would then be entitled to request and receive a bond hearing, which would afford him sufficient process to contest his detention.

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 who has not been admitted is “deemed . . . an applicant for admission.” All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3). The term “admission” is a term of art, defined by the INA 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).

Both sections 1225(b)(1) and 1225(b)(2) authorize the detention of certain aliens. Section 1225(b)(1) provides for the inspection and expedited removal of specific categories of aliens such as those guilty of fraud or misrepresentation under 8 U.S.C. § 1182(a)(6)(C). 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 [removal] proceeding[s] 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). Section 1226(a) applies to aliens “once inside the United States,” setting forth the general process followed for “arresting and detaining that group of aliens pending their removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). The government “may continue to detain the arrested alien” during removal proceedings or “may release” him on bond or conditional parole. 8 U.S.C. § 1226(a)(1). Under section 1226(a), the Attorney General and DHS have broad discretionary authority to detain an alien during removal proceedings.¹ An alien

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]

detained under section 1226(a) is entitled to a bond hearing. *See* 8 C.F.R. § 236.1(d)(1). 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); *In Re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

FACTUAL BACKGROUND

A. Petitioner’s Immigration and Detention History

CBP encountered Petitioner in the El Paso, Texas Border Patrol Sector on or about December 31, 2023, and determined that he had unlawfully entered the United States from Mexico on or around that day. *See* Declaration of Deportation Officer Damian Giraldo (“Giraldo Decl.”) ¶ 4; Ex. 1.² After determining that the Petitioner was an alien who illegally entered the United States, CBP arrested Petitioner and subsequently transported him to a nearby CBP facility for processing. Ex. 1 at 2. At that time, Petitioner admitted that he was a native and citizen of El Salvador. *Id.* Petitioner denied having a fear of persecution or torture if returned to El Salvador. *Id.*

On January 2, 2024, 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), and directing him to appear before an Immigration Judge at 201 Varick Street, New York, New York, on June 27, 2024. Giraldo Decl. ¶ 6; Ex. 2. Due to lack of bed space, Ex. 1, Petitioner was served an Order of Release on Recognizance, Form I-220A, Ex. 3; Giraldo Decl. ¶ 6. In February, the NTA

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 (2003).

² All exhibits are attached to the Government Return, dated October 31, 2025, and are cited herein as (“Ex.”).

was filed with the Executive Office for Immigration Review, thereby commencing removal proceedings. Ex. 2.

As to proceedings before the New York Immigration Court, on May 24, 2024, counsel entered a notice of appearance as the attorney representing Petitioner. Giraldo Decl. ¶ 9. After canceling the June 24 hearing identified in the NTA, the Immigration Court issued a scheduling order setting a timeline for case proceedings. *Id.* Shortly thereafter, on July 9, Petitioner submitted a defensive Application for Asylum (Form I-589). *Id.* ¶ 11; Ex. 4 at 2. Later, on October 6, 2024, Petitioner appeared before the Immigration Court with counsel for a master calendar hearing. Giraldo Decl. ¶ 13. An Individual Merits hearing was scheduled for October 4, 2027. *Id.*

The following year, on October 21, 2025, Petitioner appeared for a scheduled appointment with ICE at 26 Federal Plaza, New York City. Giraldo Decl. ¶ 14; Ex. 4 at 2. After reviewing Petitioner's case, ICE canceled his Order of Release on Recognizance and took him into custody. Giraldo Decl. ¶ 14; Ex. 3.³ During processing, ICE served Petitioner with a Warrant for Arrest of Alien, Ex. 5, and Notice of Custody Determination, Ex. 6. Petitioner was detained pursuant to section 1225(b)(2)(A) as an inadmissible applicant for admission. Giraldo Decl. ¶ 15. Later that day, bedspace was secured for Petitioner at the Delaney Hall Correctional Facility in Newark, New Jersey. Giraldo Decl. ¶ 16. Petitioner commenced this action by filing a Petition for a Writ of Habeas Corpus on October 21, 2025, which docketed the following day.

³ The Order of Release on Recognizance contains two check-boxes where ICE officers indicate the reason for canceling the order – the “alien failed to comply with the conditions of release”; or the “alien was taken into custody for removal. Ex. 3. The Deportation Officer incorrectly checked the former. Giraldo Decl. ¶ 14. Although the Order of Release on Recognizance is a four page document, ICE is unable to locate the last three pages.

ECF No. 1. After processing, ICE transferred Petitioner to the Delaney Hall Correctional Facility, where he remains detained. Giraldo Decl. ¶ 15.

B. Habeas Petition and Procedural Background⁴

Petitioner's sister, acting on his behalf, filed the Petition on October 21, 2025, commencing this action. ECF No. 1. The following day, the Court issued an order and then an amended order directing that Petitioner not be "removed from the United States unless and until the Court orders otherwise." ECF Nos. 3, 6. The Court also ordered respondents to show cause by October 24, as to why the Petition should not be granted. ECF No. 6. On October 23, at the Government's request, the Court extended the Government's time to file a response to October 31. ECF No. 15.

In the Petition, Petitioner asserts that his detention violates his substantive and procedural due process rights under the Fifth Amendment, *see* Pet. ¶¶ 15-18, 22; that the Government is allegedly detaining him under Section 1226(a) – but without affording him an individualized assessment that he posed a flight risk or a danger to the community as that provision purportedly requires – in violation of the INA and the Administrative Procedures Act, *id.* ¶¶ 7, 24. As ultimate relief, Petitioner requests that the Court issue an order directing that he not be removed from the United States during this habeas proceeding, *id.*, Prayer for Relief, ¶ 2; that the Government release him from custody, *id.* ¶ 3 and Prayer for Relief, ¶ 7; and award attorney's

⁴ As Petitioner is pro se, his submissions are construed liberally and interpreted "to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006). The liberal construction requirements for pro se litigants carry particular weight when courts consider habeas filings, given that the "writ of habeas corpus plays a vital role in protecting constitutional rights." *Simmons v. United States*, 142 S. Ct. 23, 25 (2021) (cleaned up).

fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, Pet. ¶ 25.

ARGUMENT

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

Contrary to Petitioner's assertion, Pet. ¶ 7, his 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), "for urgent humanitarian reasons or significant public benefit." 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," *i.e.*, removal proceedings.

Petitioner falls squarely 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 under section 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. 2. During his initial encounter with CBP on December 31, 2023, Petitioner admitted to illegally entering the United States without being inspected by an immigration officer at a port of entry; and lacking legal documents

to enter, pass through, or remain in the United States. Ex. 1 at 2. Accordingly, Petitioner is detained under section 1225(b)(2)(A), which mandates that he “shall be” detained pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

This reasoning comports with Supreme Court precedent.⁵ As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2) – the provision relevant here – 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. Section 1225(b), in turn, mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) . . . mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

⁵ Although some judges in this district have determined that a similarly situated petitioner’s detention was governed by section 1226 and not section 1225, *see Gonzalez v. Joyce*, 25 CV 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025); *Lopez Benitez v. Francis*, 25 CV 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 25 CV 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025), DHS respectfully disagrees with those decisions and submits that these cases are at odds with the statutory text and Supreme Court precedent for the reasons set forth here, and also notes that other courts have rejected the argument that section 1226(a) applies in this context. *See Vargas Lopez v. Trump*, 25 CV 526, 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*, 25 CV 2325, 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 complains that he was entitled to – but did not receive – “notice or opportunity to be heard” or the opportunity “to provide evidence that his arrest was not necessary.” Pet. ¶ 15. According to Petitioner, if given this opportunity, he would have established that his “arrest was not necessary” as he posed no safety threat to the public nor any risk of failing to appear for Immigration Court proceedings. *Id.* (As noted above, *supra* 3-4, under section 1226(a), the DHS officer has discretion to detain the alien after consideration of whether the alien presents a “danger to property or persons” and whether he is “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8).) Hence, Petitioner seeks a court order directing that he be released “on his own recognizance or under parole, a low bond or reasonable conditions of supervision.” *Id.*, Prayer for Relief, ¶ 4.

But these individualized assessments, provided in section 1226(a), are unavailable to Petitioner because his detention is statutorily mandated by section 1225(b)(2). Petitioner was released on his own recognizance after his unlawful entry in December 2023, which allowed his temporary release from detention into the interior of the United States. *See* Giraldo Decl. ¶ 6; Ex. 3. But his release did not constitute an “admission” into the United States. Petitioner remains an applicant for admission: “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.’” *Dep’t of Homeland Sec. 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 U.S. 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.”). Reading 8 U.S.C. § 1225(b)(2) to mandate detention for any “applicant for admission,” as explained above, accords 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 were inadmissible at the time of entry *or who have been convicted of certain criminal offenses since admission.*” *See Chavez*, 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (cleaned up) (denying application for temporary restraining order, finding that petitioners – noncitizens who had entered the United States without inspection or parole and were arrested in Pasadena, California – were subject to mandatory detention under section 1225(b)(2) and, therefore, not entitled to a bond hearing under section 1226(a)).

Though Petitioner was released on his own recognizance after his arrest near El Paso in December 2023, Girardo Decl. ¶ 4, his status as an applicant for admission has remained unchanged. Petitioner’s release was revoked on October 21, 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 Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (alien who entered without admission or inspection is an applicant 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”).⁶ Though

⁶ 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.”).

physically present in the United States, Petitioner’s status as not being “admitted” into the United States is reflected in the Supreme Court’s analysis of an alien’s due process rights. As Petitioner was intercepted shortly after his illegal entry in December 2023, 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), and was never actually “admitted” into the country within the meaning of the INA; he is thus “treated, for constitutional purposes, as if stopped at the border” under the so-called entry fiction. *Zadvydas*, 533 U.S. at 693; *see also Thuraissigiam*, 591 U.S. at 140 (explaining that an alien who “is detained shortly after unlawful entry” is not treated, for due process purposes, as having “effected an entry” into the United States, but is instead treated as “on the threshold,” just like “an alien detained after arriving at a port of entry”).

Thus, Petitioner is entitled to the procedure authorized by Congress, and no more. And the procedure Congress has established for applicants for admission like Petitioner 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.”). Those procedures do not include any right to an individualized assessment as provided in section 1226(a). Instead, for applicants for admission such as Petitioner, “if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained.*” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

As for due process, Congress has required that Petitioner be detained for removal proceedings before an immigration judge, which affords him a host of procedural protections.⁷

⁷ During removal proceedings, aliens may seek various forms of relief or protection from removal, such as asylum, withholding of removal, and protection under the Convention Against Torture. *See, e.g.*, 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). The decision whether to order such an alien removed is made by an immigration judge (not an immigration officer). *See* 8 U.S.C. § 1101(b)(4); 8 U.S.C. § 1229a (a)(1). Aliens may obtain continuances during their proceedings

See 8 U.S.C. § 1229a. Petitioner is lawfully detained pursuant to section 1225(b) and, therefore, not entitled to a bond hearing, particularly given the short length of his detention thus far.

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

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.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citing *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *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. *See* 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

for good cause. *See* 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to “examine the evidence against [them],” “to present evidence,” and “to cross-examine witnesses presented by the Government,” 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. § 1240.7(a), 1240.46(c). Aliens ordered removed may ask the immigration judge to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They are also informed that they have a right to appeal, 8 U.S.C. § 1229a(c)(5), and they may file an appeal with the BIA, 8 C.F.R. §§ 1003.1(b), 1003.38(a). If an alien appeals and the BIA enters a final removal order, the alien may file a petition for review in a court of appeals, 8 U.S.C. § 1252, and thereafter seek review in the Supreme Court, 28 U.S.C. § 1254(1).

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 correctly 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*, 20 CV 159, 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*, 13 CV 6659, 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.”).

Second, 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 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 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”). *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*, 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. *Supra* 12. 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. 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.⁸

Petitioner further alleges that the conditions of his confinement – *i.e.*, held incommunicado, without access to pen and paper, opportunity to contact his family or his attorney in the removal proceedings, nor access to a law library to prepare his habeas petition – violated his due process rights. Pet. ¶ 13. This assertion lacks merit. After being taken into custody, Petitioner was permitted to contact his sister by telephone. Ex. 4 at 3. Further, attorneys representing detainees at Delaney Hall are authorized to visit clients Monday through Saturday, from 8:00 a.m. to 7:00 p.m.; and on Sundays from 8:00 a.m. to 12:00 p.m. Giraldo Decl. ¶ 17. In person visits are also permitted as is internet video visits for social workers, family and friends. *Id.* As the Petition was filed on October 21, 2025, these allegations pertain to his “detain[ment] at 26 Federal Plaza,” Pet. ¶ 4, not his current place of confinement at Delaney Hall, where he has been held since October 22, 2025, *id.* ¶16. Given this, that he succeeded in having the Petition filed within 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.

C. 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

⁸ 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*, 25 CV 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.

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.” *Johnson*, 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). 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 In Re 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 request a bond hearing for a determination whether he presents a danger to others or a risk of flight.⁹ 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. He is represented by counsel in his removal proceedings. See Giraldo Decl. ¶ 9. 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 section 1226(a)). See also *Guzman v. Joyce*, 786 F. Supp. 3d 865, 869-71 (S.D.N.Y. 2025) (same); *Fontanelli ex rel. Bernal Garcia v. Francis*, 25 CV 7115, 2025 WL 2773234, at *5-8 (S.D.N.Y. Sept. 29, 2025) (same).¹⁰

⁹ To be clear, in light of *Matter of Yajure 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.

¹⁰ The Government acknowledges that this case presents facts similar to those in *Chipantiza-Sisalema v. Francis*, 25 CV 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025), in which another judge in this District determined that an alien detained following an immigration court appearance pursuant to Section 1226(a) was entitled to immediate release from custody, rather

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). And 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.

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

Liberally construing the Petition, Petitioner appears to seek a judicial order setting aside the actions of DHS under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A), claiming that DHS detaining him is unlawful – *i.e.*, not authorized under the INA and contrary to his due process rights. Pet. ¶ 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. The Supreme Court has made clear that where an alien’s claims for relief “necessarily imply the invalidity’ of their confinement,” those claims “must be brought in habeas” and not as APA claims. *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

than a bond hearing. *See id.* at *4. The Government respectfully disagrees with that court’s decision to the extent it holds that a habeas petitioner detained pursuant to Section 1226(a) need not request a custody redetermination hearing before seeking judicial relief. *See id.* at *3.

‘adequate remedy in a court,’ . . . habeas corpus, not the APA, is the proper vehicle here.”).

Moreover, Petitioner cannot show that there is anything arbitrary or capricious or unlawful about his detention when his detention is mandated by statute. *See Chen v. Rollins*, 23 CV 1440 (VEC), 2025 WL 2476930, at *6 (S.D.N.Y. Aug. 28, 2025) (“APA instructs courts to ‘hold unlawful and set aside agency action’ that is “not in accordance with law.”) (quoting 5 U.S.C. § 706(2)(A)).

For these reasons, Petitioner’s APA claim fails.

CONCLUSION

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

Dated: New York, New York
October 31, 2025

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 4(A) 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 6,916 words.