UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LISUAL ARMANDO GUZMAN ANDUJAR, Petitioner, v. LaDEON FRANCIS, *et al.*, Respondents.	No. 25 Civ. 9199 (JLR)

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

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Respondents (the "Government") respectfully submit this memorandum of law in opposition to the petition for a writ of habeas corpus filed on behalf of petitioner Lisual Armando Guzman Andujar ("Petitioner") by his next friend, Hilda Cecilia Villegas, *see* Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (the "Petition" or "Pet."), Dkt. No. 1, and in response to the order to show cause issued by the Court on November 4, 2025, Dkt. No. 4.

PRELIMINARY STATEMENT

Petitioner is a citizen of the Dominican Republic and an applicant for admission to the United States. In January 2023, he was apprehended by U.S. Customs and Border Protection ("CBP") in Arizona. 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 U.S. Department of Homeland Security ("DHS") had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a or to issue an expedited removal order. DHS opted to place Petitioner in Section 1229a removal proceedings and release him in the interim on his own recognizance. On November 4, 2025, U.S. Immigration and Customs Enforcement ("ICE") took Petitioner into custody following a scheduled appointment with ICE at 290 Broadway in Manhattan.

Through the habeas petition filed on his behalf, Petitioner asserts that his detention violates his Fifth Amendment due process rights. The Petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, under precedent from the Board of Immigration Appeals, Petitioner is detained under Section 1225(b)(2)(A) and thus subject to mandatory detention and potential release only on discretionary parole. To the extent the Court determines Petitioner's detention is instead governed by 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 before an immigration judge. Thus, Petitioner cannot maintain any due process challenges.

Petitioner's remaining claims should be rejected as well. First, his challenge under the Administrative Procedure Act ("APA") fails because the Supreme Court has held that claims based on the invalidity of confinement must be brought in habeas and not under the APA. Second, any claim that Petitioner's detention violates the Immigration and Nationality Act ("INA") fails given that Section 1225(b)(2)(A)—which is part of the INA—mandates Petitioner's detention. Third, Petitioner's claims based on his conditions of confinement and access to counsel while he was at the temporary hold room at 26 Federal Plaza in Manhattan are moot because he has since been transferred to a detention facility and obtained counsel.

Accordingly, the Court should deny the Petition.

LEGAL BACKGROUND

For more than a century, the immigration laws have authorized immigration officials to arrest aliens subject to removal and detain them during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233-34 (1960). In the INA, Congress has enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Detention during removal proceedings is a "constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

Prior to 1996, the INA treated aliens differently based on whether the alien had *physically* "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45–46 (2011) ("Before 1996, these two kinds of action occurred in different procedural settings, with an alien

seeking entry (whether for the first time or upon return from a trip abroad) placed in an 'exclusion proceeding' and an alien already here channeled to a 'deportation proceeding.'") (citing *Landon v. Plasencia*, 459 U.S. 21, 25–26 (1982)). The term "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. 2010).

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.") ("[I]llegal aliens who have entered the United States without inspection gain equities and

privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). The IIRIRA replaced the focus on physical "entry" with a focus on lawful "admission." The IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep. at 226 (emphasis added). The 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, under 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3). The term "admission" is defined by the INA to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and it provides for "expedited removal proceedings" in certain circumstances. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). Section 1225(b)(2)(A)

provides for the inspection of all "other" applicants for admission, and it states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

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

In contrast, aliens who are not applicants for admission may (but need not) be detained at the Government's discretion. Under 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

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[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 administrative 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 Section 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).

arrested alien" during the pendency of removal proceedings). Under Section 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); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

FACTUAL BACKGROUND

I. Petitioner's Immigration History, Removal Proceedings, and Detention by ICE

Petitioner, a native and citizen of the Dominican Republic, unlawfully entered the United States and was encountered in Arizona by CBP on January 27, 2023. *See* Declaration of Assistant Field Officer Kristopher Dawson ("Dawson Decl.") ¶¶ 2–3. That same day, CBP issued and served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings. *Id.* ¶ 5; Gov't Return Ex. B at 1. The NTA charged Petitioner with removability pursuant to 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. Dawson Decl. ¶ 5; Gov't Return Ex. B at 1. The NTA also directed Petitioner to appear for a hearing before an immigration judge in Boston on November 21, 2024. Dawson Decl. ¶ 7; Gov't Return Ex. B at 1. The NTA was ultimately filed with an immigration court in Boston, Massachusetts, thereby commencing proceedings against Petitioner. Dawson Decl. ¶ 7.

On January 28, 2023, CBP exercised its discretion to release Petitioner on his own recognizance. *Id.* ¶ 6. The order of release on recognizance was premised on several conditions, including that Petitioner would not violate any local, state, or federal laws. Gov't Return Ex. B at 4.

On December 22, 2024, Petitioner was arrested by the New York Police Department for misdemeanor assault in the third degree (N.Y. Penal Law § 120.00-01) and harassment in the second degree (N.Y. Penal Law § 240.26-01). Dawson Decl. ¶ 11; Gov't Return Ex. A at 15. The charges were ultimately dismissed on April 17, 2025. Dawson Decl. ¶ 11; Gov't Return Ex. A at 15.

On November 4, 2025, Petitioner appeared *pro se* at a master calendar hearing in New York. Dawson Decl. ¶ 17. The case was adjourned until March 24, 2026. Gov't Return Ex. A at 16. Immediately after the hearing, ICE took Petitioner into custody on the premises of the immigration court. Dawson Decl. ¶ 18; *see also* Gov't Return Ex. A at 1. ICE transported Petitioner to the processing space at 26 Federal Plaza and personally served Petitioner with an arrest warrant. Dawson Decl. ¶ 18; Gov't Return Ex. A at 1.

Petitioner remained at the temporary hold room at 26 Federal Plaza until November 8, 2025, when he was transferred to the Orange County Jail in Goshen, New York. Dawson Decl. ¶ 19. Petitioner is still being held at the Orange County Jail. *Id.* ¶ 20. Since arriving there, he has retained counsel. *See* ECF No. 10.

II. The Habeas Petition

On November 4, 2025, Petitioner, through his next friend, filed a *pro se* habeas petition under 28 U.S.C. § 2241 in this Court. *See* Dkt. No. 1. Petitioner challenges his detention as unlawful and seeks an order from this Court requiring ICE to immediately release him. *See id.* ¶¶ 21–24, Prayer for Relief. Petitioner asserts violations of his due process rights, the Administrative Procedure Act, and the INA. *See id.* ¶¶ 21–24. He also claims that his conditions of confinement at 26 Federal Plaza in Manhattan, including his alleged inability to retain counsel there, are unconstitutional. *See id.* ¶¶ 15–17. Finally, Petitioner contends he is entitled to costs and fees under the Equal Access to Justice Act. *Id.* ¶ 25.

ARGUMENT

I. Petitioner Is Lawfully Detained

A. Petitioner's Detention Is Authorized by Section 1225(b)

Petitioner has been lawfully detained under 8 U.S.C. § 1225(b), which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a," *i.e.*, removal proceedings.

Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. First, Petitioner is an "applicant for admission" to the United 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* Gov't Return Ex. B at 1, and he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). 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*, applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud,

misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2)—the provision relevant here—is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. And Section 1225(b) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See id.* at 302 (Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

Any argument that Section 1226(a) applies instead of Section 1225(b), and that Petitioner was therefore entitled to process before being detained, is without merit.[2] After the IIRIRA, "an alien who tries to enter the country illegally is treated as an 'applicant for admission,' 8 U.S.C. § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" *Thuraissigiam*, 591 U.S. at 140. Applicants for admission like Petitioner are "treated, for constitutional purposes, as if stopped at the border," *Zadvydas v. Davis*, 533 U.S. 678,

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[2] Some courts, including in this district, have endorsed this argument. *See, e.g.*, *Huamani v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (granting habeas petition based on conclusion that petitioner's detention was effectuated pursuant to Section 1226(a) rather than Section 1225(b)(2)); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) (same); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (same); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same). DHS respectfully disagrees with those decisions, and notes that other courts have rejected the argument that Section 1226(a) applies in this context. *See Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (rejecting petitioner's assertion that he was detained pursuant to Section 1226(a) rather than Section 1225(b)(2)); *Chavez v. Noem*, No. 25 Civ. 02325 (CAB), 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)).

693 (2001) (internal quotation marks omitted), even if they are paroled into the United States for a limited purpose, *see United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution."). And such applicants for admission are not permitted release under Section 1226.

Here, Petitioner was detained shortly after his unlawful entry in January 2023. Dawson Decl. ¶ 3. 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), and treated for constitutional purposes as if stopped at the border. Though Petitioner was released on his own recognizance after his arrest, *see* Dawson Decl. ¶ 6, his status as an applicant for admission has remained unchanged. Petitioner's release was revoked on November 4, 2025, when ICE again arrested him. *Id.* ¶ 18. Because Petitioner is an applicant for admission under BIA precedent that is binding on ICE, he was re-arrested and his detention is mandatory pursuant to Section 1225(b)(2)(A). *See Hurtado*, 29 I. & N. Dec. at 220 (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").[3]

B. Petitioner Is Not Entitled to a Bond Hearing

As an applicant for admission, Petitioner is not entitled to a bond hearing under Section 1225(b)(2)(A). He is entitled only to the procedures set forth by Congress, and such process does not include bond hearings.

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[3] 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.").

Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Here, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Instead, for an applicant for admission, "if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections.[4] *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

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[4] 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* 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). The decision whether to order such an alien removed is made by an immigration judge (not an immigration officer). 8 U.S.C. § 1101(b)(4); 8 U.S.C. § 1229a(a)(1). Aliens may obtain continuances during their proceedings for good cause. 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to "examine the evidence against [them]," "to present evidence," and "to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. §§ 1240.7(a), 1240.46(c). Aliens ordered removed may ask the immigration judge to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They are also informed that they have a right to appeal, 8 U.S.C. § 1229a(c)(5), and they may file an appeal with the Board of Immigration Appeals ("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).

humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Reading Section 1225(b)(2) to mandate detention for any "applicant for admission" is in accordance with the plain meaning of the text as enacted by Congress in the IIRIRA. *See Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 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"). This reading does not render Section 1226 superfluous. That provision 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), 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (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) (emphasis in original)). And it maintains the dichotomy prescribed by Congress in the IIRIRA by distinguishing between those who effectuate a lawful entry (even if later found removable) and are subject to Section 1226, and those who illegally entered and are statutorily deemed to be applicants for admission subject to Section 1225.

II. Petitioner's Detention Under Section 1225(b) Comports with Due Process

Because Petitioner is an applicant for admission and thus treated for constitutional purposes as if stopped at the border, he is lawfully detained pursuant to Section 1225(b), and neither his procedural nor substantive due process rights have been violated. First, with respect to his procedural due process rights, the Supreme Court has made clear that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*,

345 U.S. at 212 (citing *Knauff*, 338 U.S. at 544); *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment").

In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been "permanently excluded from the United States on security grounds." *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08. The Supreme Court held that Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. The Court recognized that "once passed through our gates, even illegally," aliens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. But an alien "on the threshold of initial entry stands on a different footing." *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* (quoting *Knauff*, 338 U.S. at 544).

Indeed, as a court in this district recognized in a case (decided after *Jennings*) involving an applicant for admission, "because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018). Another court in this district has held the same. *See Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute). Other judges have agreed. *See, e.g.*, *Gonzales Garcia v. Rosen*,

513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20 Civ. 159 (WLS) (MSH), 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) ("Applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens' procedural due process rights entitle them only to the relief provided by the INA."); *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413, at *2 (W.D.N.Y. Apr. 25, 2014) ("The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings.").

Moreover, more than a century of Supreme Court precedent confirms that applicants for admission are treated differently under the law for due process purposes from other categories of detained aliens. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In the relevant provisions of the INA, Congress has decided to treat applicants for admission differently by detaining them during ongoing proceedings to effectuate their exclusion from the United States while considering whether to admit them. Unlike admitted aliens later placed in removal proceedings and detained under Section 1226, applicants for admission are "request[ing] a privilege," *Landon*, 459 U.S. at 32, and therefore "stand[ ] on a different footing," *Mezei*, 345 U.S. at 212. Their lack of entitlement to a bond hearing thus flows logically from their lack of admission to the United States in the first instance. Given that the constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide, Petitioner cannot show that he has suffered a procedural due process violation.

Petitioner's detention for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

Because Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A), *see Jennings*, 583 U.S. at 298–301, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212. To the extent Petitioner argues that his detention under Section 1225 violates his due process rights because DHS initially detained him under Section 1226, that argument fails because of the intervening BIA decision in *Matter of Hurtado*—a decision binding on ICE that was issued only recently, well after Petitioner's initial arrest. It is settled that agencies may change their interpretations of statutes, provided that they offer a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "is not estopped from changing a view [it] believes to have been grounded upon a

mistaken legal interpretation and "'[a]n administrative agency is not disqualified from changing its mind'"). *Matter of Hurtado* provides a detailed analysis of the INA's statutory framework and explains why Petitioner's detention is governed by Section 1225(b)(2)(A).

The Government acknowledges that another judge in this district has 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), even though *Black* itself involved aliens detained under Section 1226(c). *See Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully disagrees with that decision and 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, 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. In *Al-Thuraya*, the court concluded that this concept, known as the "entry fiction," is "inapplicable in the context of [the petitioner's] request for a bond hearing" and instead applies to "the political branches' authority to legally admit or exclude noncitizens." *Al-Thuraya*, 2025 WL 2858422, at *4. But in *Mezei*, the Supreme Court upheld the Attorney General's detention without a hearing and reversed the district court's order that he be released on bond. 345 U.S. at 207–08. It was in this context that the Supreme Court explained that "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Mezei*, 345 U.S. at 212. The entry fiction is not limited to "the political branches' authority to legally

admit or exclude noncitizens," *Al-Thuraya*, 2025 WL 2858422, at *4, but instead "runs throughout immigration law." *Zadvydas*, 533 U.S. at 693 (discussing *Mezei* and noting that the "indefinite detention" of the petitioner on Ellis Island "did not count as entry into the United States" and instead he was "'treated,' for constitutional purposes, 'as if stopped at the border'"). The Government respectfully submits that *Al-Thuraya* did not fully account for this fact and was incorrectly decided.[5]

Petitioner's due process claim should therefore be denied.

III. Should the Court Determine That Petitioner Is Detained Pursuant to Section 1226(a), Petitioner May Seek Release Before an Immigration Judge at a Bond Hearing

Should this Court determine that Petitioner's detention is not governed by Section 1225, ICE nevertheless has authority to detain Petitioner pursuant to Section 1226(a), which "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

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[5] Additionally, at least one judge in this district addressing a similarly situated petitioner—an applicant for admission who was previously released by CBP under Section 1226—has determined that, even if Section 1225 governs, the petitioner's due process rights were violated. *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025). DHS submits that the matter was wrongly decided and respectfully disagrees with the court's decision.

When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). To secure release, the alien must show that "he does not pose a danger to the community and that he is likely to appear for future proceedings." *Guzman Chavez*, 594 U.S. at 527 (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).[6] If DHS decides to release an alien, it may "at any time" revoke such release, "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

An alien detained pursuant to Section 1226(a) may request a post-deprivation custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors and a determination whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Thus, to the extent the Court determines that Petitioner's current detention does not fall within the scope of Section 1225 and is instead governed by Section 1226(a), Petitioner may then request a bond hearing before an immigration judge to seek release on bond upon an assessment

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[6] In addition to bond, an alien may be released on his own recognizance under Section 1226(a)(2)(B), which is a form of conditional parole. *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS's conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]"); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

of whether he presents a danger to others or a risk of flight.[7] *See* 8 C.F.R. § 1003.19. That 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), the Court should require Petitioner to exhaust his administrative remedies through a bond hearing rather than direct Petitioner's immediate release. While there 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) (cleaned up) (requiring exhaustion for habeas petitioner detained under Section 1226(a)); *accord, e.g., 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) (cleaned up). But exhaustion "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

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

detention is properly under Section 1226(a), not Section 1225. Petitioner should therefore be required to request a bond hearing before an immigration judge before this Court grants his release.

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

Petitioner additionally asserts that his detention was arbitrary and capricious, in violation of the APA. Pet. ¶¶ 23–24. This claim is essentially duplicative of the constitutional claim addressed above, and fails for essentially the same reasons. It also fails because 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."). Accordingly, Petitioner's APA claim also fails.

V. Petitioner's Detention Does Not Violate the INA

Though Petitioner has argued that his detention is *ultra vires* to the INA (Pet. ¶¶ 23–24), Section 1225(b)(2)(A)—which corresponds to Section 235(b)(2)(A) of the INA—mandates Petitioner's detention for the reasons set forth above. *See* Section I, *supra*. Thus, Petitioner's detention cannot be ultra vires to the statute. *Ayala Chapa v. Bondi*, 132 F.4th 796, 798 (5th Cir. 2025) ("An ultra vires claim generally requires proof that an agency exceeded the bounds of its statutory authority. An agency acts ultra vires when it 'go[es] beyond what Congress has permitted it to do.'" (quoting *City of Arlington v. FCC*, 569 U.S. 290, 297–98 (2013)). For this reason, Petitioner's statutory claim fails.

VI. The Claims Regarding Conditions of Confinement and Access to Counsel Are Moot

Petitioner's claims about the conditions of confinement while he was held at the temporary hold room at 26 Federal Plaza in Manhattan, including his alleged inability there to access counsel, are moot. *See* Pet. ¶¶ 15–17. A habeas petitioner may not challenge the conditions of confinement at a particular facility once he is transferred out of that facility. *See Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) (dismissing conditions of confinement claim as moot after inmate was transferred to different facility); *Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) ("It is settled in this Circuit that a transfer from a prison facility moots an action for injunctive relief against the transferring facility."); *Jabarah v. Garcia*, No. 08 Civ. 3592 (DC), 2010 WL 3834663, at *3 (S.D.N.Y. Sept. 30, 2010) ("When an inmate is transferred from a prison facility, any pending injunctive action against the transferring facility is moot, regardless of whether the action was filed prior to the transfer."). Here, Petitioner's conditions of confinement claims are moot because, since filing the Petition, he has been transferred from 26 Federal Plaza to a detention facility in Orange County. Dawson Decl. ¶ 19. And by the same token, Petitioner has now successfully retained counsel. *See* ECF No. 10 (notice of appearance of pro bono counsel on behalf of Petitioner). Accordingly, the Court should dismiss the conditions of confinement claims as moot or otherwise deny them.

VII. Petitioner's Request for an Award of Costs and Fees Should Be Denied

Finally, in Count Three, Petitioner asserts a claim for an award of his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"). *See* Pet. ¶ 25; 28 U.S.C. § 2412. This claim should be denied. First, such a claim is premature because there is no final judgment. *See, e.g.*, *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991) (finding an EAJA application was premature when it was filed prior to entry of a "final judgment"). And second, Petitioner filed

his petition *pro se*, and it is well-settled that pro se litigants may not recover attorney's fees under EAJA. *See, e.g., S.E.C. v. Price Waterhouse*, 41 F.3d 805, 808 (2d Cir. 1994).

CONCLUSION

For the foregoing reasons, the Petition for a writ of habeas corpus should be denied.

Dated: New York, New York
November 10, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the 8,750-word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 7,235 words.