

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE FLORES PALMA,

Petitioner,

v.

PAUL ARTETA, *et al.*,

Respondents.

No. 25 Civ. 9340 (JPC)

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

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The Government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus filed by petitioner Jose Flores Palma (“Petitioner”) on November 7, 2025. Dkt. No. 1.

PRELIMINARY STATEMENT

U.S. Immigration and Customs Enforcement (“ICE”) has charged Petitioner, a citizen of El Salvador, as removable because he is an inadmissible “arriving alien” not in possession of a valid entry document. His detention pending removal proceedings is mandated by 8 U.S.C. § 1225(b)(2)(A), subject to release on discretionary parole. Petitioner presented at a port of entry in November 2023, after which he was paroled into the United States. That parole was terminated under 8 C.F.R. § 212.5(e) when a notice to appear was served on Petitioner on December 10, 2024. On March 31, 2025, Petitioner was arrested by ICE. He remains detained pending his removal proceedings.

Petitioner filed this habeas action challenging his immigration detention on grounds that the termination of his parole and subsequent detention violates the Fifth Amendment, the Fourth Amendment, and the Administrative Procedure Act. He also argues that he is entitled to interim release pending adjudication of the petition. As ultimate relief, he seeks immediate release or a bond hearing with certain criteria.

The petition should be denied. The termination of Petitioner’s parole and his subsequent detention are lawful. Further, arriving aliens like Petitioner are not entitled to bond hearings as a matter of due process. To the contrary, the Supreme Court has long made clear that arriving aliens’ constitutional due process rights extend only so far as the procedures Congress affords them—and neither § 1225(b) nor any other relevant provisions render arriving aliens eligible for bond hearings. Accordingly, Petitioner’s detention is lawful and comports with due process.

FACTUAL BACKGROUND

I. Petitioner's Initial Unlawful Entry and Expedited Removal

On July 22, 2022, CBP encountered Petitioner, a citizen of El Salvador, in or near Donna, Texas, and determined that he had unlawfully entered the United States on that same date. *See* Declaration of Deportation Officer William Morrow (“Morrow Decl.”) ¶¶ 3-4. Flores Palma was processed for expedited removal, and he did not claim a fear of return to El Salvador. *Id.* ¶ 5. On July 29, 2022, DHS removed Flores Palma from the United States to El Salvador via charter flight, pursuant to an expedited removal order. *Id.* ¶ 6.

II. Petitioner's Subsequent Presentation at the Border, Parole, and Detention

On November 9, 2023, Flores Palma presented himself on the Mexico side of the San Ysidro Port of Entry and applied for admission to enter the United States. *Id.* ¶ 7. CBP served Flores Palma with a Form I-862, Notice to Appear (“NTA”) and paroled Flores Palma into the United States pending removal proceedings. *Id.* However, the 2023 NTA was never filed with the Executive Office for Immigration Review (“EOIR”), and so removal proceedings were not commenced at that time. *Id.* The following day, Flores Palma was enrolled in Alternatives to Detention (“ATD”) by the ICE San Diego Field Office. *Id.* ¶ 8.

On December 10, 2024, during an ATD check in, ICE's New York City Field Office served an NTA on Flores Palma, and filed that NTA with EOIR—and thus commencing removal proceedings against Flores Palma—charging Flores Palma as an “arriving alien” who is inadmissible under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who at the time of his application for admission was not in possession of a valid entry document. *Id.* ¶ 9.

On or about January 8, 2025, ICE obtained documentation indicating that on April 14, 2010, Flores Palma was convicted of aggravated robbery in El Salvador and sentenced to four years' imprisonment. *Id.* ¶ 10; *see also* Exhibit 5.

On March 31, 2025, Flores Palma was arrested by ICE and detained under 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 11. ICE served him with a Warrant for Arrest of Alien (Form I-200), but erroneously issued him a Notice of Custody Determination (Form I-286). *Id.* Since March 31, 2025, Flores Palma has been detained at Orange County Jail in Goshen, New York. *Id.*

On April 1, 2025, ICE filed a motion to change venue to the Varick Street Immigration Court, detained docket, with EOIR, which was granted on April 3, 2025. *Id.* ¶ 12. On April 10, 2025, Flores Palma appeared pro se via video teleconference for a master calendar hearing and requested an adjournment to speak with an attorney; the immigration judge granted that request and adjourned the matter to April 24, 2025. *Id.* ¶ 13.

On April 15, 2025, ICE reviewed Flores Palma's case for reinstatement of the July 2022 removal order. At that time, a review of his records did not accurately reveal that Flores Palma was paroled into the United States by CBP in November 2023. *Id.* ¶ 14. On the same day, believing that Flores Palma's removal order could be reinstated, ICE filed a motion to dismiss Flores Palma's INA § 240 removal proceedings without prejudice in order to reinstate the prior removal order with the issuance of a Form I-871. *Id.* The immigration judge granted that motion on April 24, 2025. *Id.* ¶ 15.

On May 21, 2025, Flores Palma filed a timely appeal of the immigration judge's decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 16. On November 14, 2025, ICE and Flores Palma filed a joint motion to the BIA requesting remand to the Immigration Judge in order to continue INA § 240 removal proceedings, as ICE determined that Flores Palma's removal order

was not subject to being reinstated. *Id.* ¶ 20. Upon remand of the proceedings to the immigration judge, ICE intends to rescind the improvidently issued Form I-871 reinstatement of the 2022 removal order, and Flores Palma's removal proceedings will proceed. *Id.* ¶ 21.

III. Petitioner's Habeas Petition

Petitioner filed his habeas petition in this Court on November 7, 2025, ECF No. 1 ("Pet."). Petitioner asserts: (1) violations of his procedural due process rights under the Fifth Amendment based on the revocation of his parole and his detention (Counts 1 and 5); (2) violations of his substantive due process rights under the Fifth Amendment (Count 2); (3) a violation of the Administrative Procedure Act based on the revocation of his parole (Count 3); (4) unlawful arrest in violation of the Fourth Amendment (Count 4).¹ Pet. ¶¶ 81-99. He also maintains that he is entitled to interim release pending adjudication of this petition pursuant to *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). *Id.* ¶¶ 100-105.

ARGUMENT

FLORES PALMA'S HABEAS PETITION SHOULD BE DENIED

I. Petitioner's Challenges to His Detention Fail

Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 298-301 (2018). Having been placed in removal proceedings to pursue applications for relief and having been considered for release on parole, Petitioner has been afforded all of the process that he is due, and

¹ The habeas petition makes several stray references suggesting that Petitioner's detention may be governed by 8 U.S.C. § 1226(a) as opposed to 8 U.S.C. § 1225(b), but the petition presents no claim or argument on that issue. Nor could it, as Petitioner is indisputably an arriving alien, and as such, his detention falls squarely within the ambit of § 1225(b).

his continued detention is authorized by law and comports with his limited due process rights under the Constitution as an arriving alien.

The Supreme Court “has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). 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); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (under the Due Process Clause, arriving aliens have “only those rights regarding admission that Congress has provided by statute”). Here, “the procedure authorized by Congress” in § 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Mezei*, 345 U.S. at 212.

The broad scope of the political branches’ authority over immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Accordingly, “certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). That includes arriving aliens, who are “treated, for constitutional purposes, as if stopped at the border,” *id.*, 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.”); *see also Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958); *Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (“It is well established that aliens detained at the border are not entitled to the same protections as those who have been

admitted into the United States. . . . Providing aliens at the border with more limited procedural protections than persons ‘admitted’ to the United States is not only rooted in precedent, it is also essential to the effective administration of our immigration laws.”).

Among other things, aliens seeking admission may be detained without a bond hearing pending admission or removal. In *Mezei*, the Supreme Court held that an alien’s detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been “permanently excluded from the United States on security grounds.” *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08.

The Supreme Court held that Mezei’s detention did not “deprive[] him of any statutory or constitutional right.” *Id.* at 215. The Court reiterated that “the power to expel or exclude aliens” is a “fundamental sovereign attribute exercised by the Government’s political departments” that is “largely immune from judicial control.” *Id.* at 210. The Court recognized that “once passed through our gates, even illegally,” aliens “may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.” *Id.* at 212. But “an alien on the threshold of initial entry stands on a different footing” than an alien within the United States. *Id.* For aliens seeking admission, “[w]hatever the procedure authorized by Congress is, it is due process.” *Id.*

The procedure Congress has established for arriving aliens like Petitioner does not include the provision of bond hearings.² Generally, if immigration officials determine that an alien such as Petitioner is inadmissible because he cannot produce valid entry documents at a port of entry, 8 U.S.C. § 1182(a)(7), “the officer shall order the alien removed from the United States without further hearing or review,” 8 U.S.C. § 1225(b)(1)(A)(i), which is precisely what happened to Petitioner the first time he unlawfully entered without inspection. Under two circumstances, DHS may place an arriving alien into removal proceedings: first, where an alien claims a fear of persecution and an asylum officer determines that the alien has a credible fear of persecution. 8 U.S.C. § 1225(b)(1)(B)(ii). And second, as relevant here, “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.” 8 U.S.C. § 1225(b)(2)(A). Under those circumstances, “the alien shall be detained for a proceeding under section 1229a of this title.” *Id.* That is, in removal proceedings before an immigration judge, which afford the alien a host of procedural protections.³ *See* 8 U.S.C. § 1229a.

² Petitioner remains an applicant for admission, notwithstanding his prior release on parole. *See, e.g., United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at the border’ for the purposes of immigration law and are treated as applicants for admission into the country.”); *Kordic*, 386 F.2d at 235 (“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.”).

³ 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).

But aliens detained under 8 U.S.C. § 1225(b)(2)(A) generally cannot be released from custody during their removal proceedings. The statute mandates detention during the pendency of removal proceedings, and the exclusive means of release for an arriving alien such as Petitioner is the Department of Homeland Security's discretionary parole authority. *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for “urgent humanitarian reasons” or “significant public benefit”); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).⁴

Given this broad general authority over the admission of aliens and the specific procedures that Congress has implemented, there is no basis for this Court to conclude that Petitioner's due process rights extend to include a right to a bond hearing. Petitioner cites to the Second Circuit's decision in *Black v. Decker*, 103 F.4th 133 (2024)—a case that involved criminal aliens subject to mandatory detention under 8 U.S.C. § 1226(c), not arriving aliens—and the Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), arguing that the *Mathews* balancing test applies here and “mandates” that he receive a bond hearing. *See* Pet. ¶¶ 67-80.⁵ But those decisions are inapposite. And while *Black* evaluated a prolonged detention claim and the right to a bond

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).

⁴ Petitioner was released on parole in November 2023, but that parole was terminated upon the service of a notice to appear (the charging document used to commence removal proceedings) in December 2024. His further release on parole pending the resolution of his removal proceedings has not been authorized by the Secretary, and thus he remains detained. Notwithstanding his prior release on parole, Petitioner is still considered to be on the threshold of initial entry. *See, e.g., Barber*, 357 U.S. at 190.

⁵ Petitioner also cites a recent decision by a court in this district, which concluded that an applicant for admission had a due process right to a bond hearing. *See Al-Thuraya v. Warden*, No. 25 Civ. 2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The government respectfully disagrees with this decision and submits that it was wrongly decided for the reasons explained in this brief.

hearing under the framework provided by *Mathews*, that due process framework and those cases are inapplicable in the context of arriving aliens who are detained under 8 U.S.C. § 1225(b). *Mathews* is inapplicable here, not least of which because there is no deprivation of a protected liberty interest—as explained herein, applicants for admission like Petitioner have no constitutionally protected liberty interest in entering the United States or being released in the interior. Though physically present in the United States, Petitioner is “treated, for constitutional purposes, as if stopped at the border.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (cleaned up).⁶

Notably, the Supreme Court’s decisions in *Thuraissigiam* and *Mezei* foreclose any such relief that Petitioner seek: “[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; cf. *Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens “are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment”). Indeed, as Judge Sullivan correctly recognized in a similar case decided after *Jennings*, involving an arriving alien, “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). Other judges have held the same. See, e.g., *Gonzales Garcia v.*

⁶ This is because the longstanding “entry fiction” doctrine treats aliens seeking admission at the border as if they have not yet entered the country, even if physically present on U.S. soil. See, e.g., *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (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”); *Barber*, 357 U.S. at 188 (“For over a half century this Court has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States.”); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (S.D.N.Y. 2020) (“[Petitioner] is considered to be ‘at the threshold of initial entry’ for immigration purposes pursuant to the so-called ‘entry fiction’ by which ‘aliens who have been denied admission to the United States yet are present within its borders are ‘treated, for constitutional purposes, as if stopped at the border.’”).

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, 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.”); *Mendez Ramirez*, 612 F. Supp. at 220-21 (Woods, J.) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute); *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413 (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 precedent from the Supreme Court 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.”). Congress has decided to treat arriving aliens differently, in order to effectuate their exclusion from the United States while considering whether to admit them, by holding them in detention during those ongoing proceedings. Unlike admitted aliens placed in removal proceedings and detained under 8 U.S.C. § 1226, arriving aliens were not living in the United States and are “request[ing] a privilege,” *Landon*, 459 U.S. at 32, and therefore “stand[] on a different footing,” *Mezei*, 345 U.S. at 212-13; *see also Thuraissigiam*, 591 U.S. at 140 (“an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’”).

Their lack of entitlement to a bond hearing thus flows logically from their lack of admission to the United States in the first place. Further, arriving aliens are not foreclosed from any and all possibility of release during their proceedings: they may secure release through discretionary parole. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c). An alien can also agree to his removal, thus bringing his detention during removal proceedings to an end and ordinarily returning him to freedom (albeit abroad). And unlike the detention at issue in *Mezei*, detention under § 1225(b) is inherently temporary and has a discernable endpoint: the conclusion of removal proceedings. *See Jennings*, 583 U.S. at 297 (when proceedings end for applicants for admission placed in removal proceedings, “detention under § 1225(b) must end as well”).⁷

The constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide. In § 1225(b) and related provisions, Congress has afforded applicants for admission a variety of protections, but has excluded the possibility of bond hearings. *See Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Consequently, Petitioner does not have a due process right to a bond hearing, and so the Court should therefore deny Petitioner’s due process claims challenging his detention.

II. Petitioner’s Other Challenges Fail

A. Petitioner’s Parole Revocation Does Not Violate Due Process

Petitioner’s claim that his parole revocation violates his procedural due process rights should be denied because ICE complied with 8 C.F.R. § 212.5(e) when terminating his parole.

⁷ The conclusion of removal proceedings is when the proceedings are administratively final. *See, e.g., Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (“An order of removal is ‘final’ upon the earlier of the BIA’s affirmance of the immigration judge’s order of removal or the expiration of the time to appeal the immigration judge’s order of removal to the BIA.” (citing 8 U.S.C. § 1101(a)(47)(B))).

Under that regulation, “when in the opinion of” certain authorized officials “neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.” 8 C.F.R. § 212.5(c)(2)(i). Petitioner was paroled into the United States on or about November 9, 2023. Morrow Decl. ¶ 7. While notice is required to revoke parole under this provision, “[w]hen a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.” *Id.*; *see also* 8 C.F.R. § 244.1 (defining the term “charging document” to include a notice to appear). That is precisely what happened—on December 10, 2024, Petitioner was served with a notice to appear. Morrow Decl. ¶ 9; Exhibit 3. Because the notice to appear did not specify otherwise, the service of the charging document constituted written notice of the termination of his parole; nothing else was required. *See* Exhibit 3. Because ICE did comply with the applicable regulations in terminating Petitioner’s parole, his procedural due process claim on this score fails. *See, e.g., Sahin v. Bondi*, No. 23-8043, 2025 WL 2618924 (2d Cir. Sept. 11, 2025) (summary order) (rejecting petitioner’s procedural due process claim on the ground that the immigration judge complied with the relevant regulations).

B. Petitioner’s Detention Does Not Violate the Fourth Amendment

Petitioner’s Fourth Amendment claim – that ICE officials arrested him without information of changed circumstances that would justify his arrest, Pet. ¶¶ 94-96 (Count Four) – should be denied because the Fourth Amendment has no applicability in the context of an immigration arrest. *See Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). Instead, there is “overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens such as petitioner.” *Id.* at 233; *cf. Gerstein v. Pugh*, 420 U.S. 103, 127 n. 27 (1973) (noting that “the Fourth Amendment

was tailored explicitly for the criminal justice system,” and that its “probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of *criminal conduct*” (emphasis added)). Here, ICE undertook an administrative arrest of Petitioner, not an arrest in connection with any alleged criminal conduct.

C. Petitioner’s Claim Under the APA Fails

Petitioner cannot sustain a claim under the APA because the APA is not the proper vehicle to challenge the validity of one’s detention. The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee’s confinement, regardless of whether a detainee formally requests release from confinement, such “claims fall within the ‘core’ of the writ of habeas corpus and thus *must be brought in habeas*.” *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—and it is simply not cognizable under the APA. Petitioner’s challenge to detention premised on the APA, then, must fail.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 (“[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review”); *see also J.G.G.*, 604 U.S. 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.”). Here, Petitioner has identified alternative avenues for remedy via a habeas petition. Accordingly, Petitioner’s APA claim, Pet. ¶¶ 90-93 (Count Three), should be denied.

III. Petitioner Should Not Be Released Pending Adjudication of this Petition

Petitioner also seeks interim release under the Court's inherent authority and *Mapp v. Reno*. See Pet. ¶¶ 100-105. But such release is an exceptional remedy warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Mapp*, 241 F.3d at 230. The Second Circuit made clear in *Mapp* that the power of Article III courts to grant bail for aliens in immigration proceedings is, at most, a "limited one, to be exercised in special cases only." *Id.* at 226. Such relief is to be granted "only in unusual cases," and the standard is "a difficult one to meet." *Id.* The burden is on the petitioner to make the necessary showings. *Id.* Petitioner has not done so here.

First, for the reasons already discussed, Petitioner has not raised substantial claims. Petitioner's detention is mandatory under Section 1225(b)(2)(A). Petitioner's claims for violations of the Constitution and the APA are also infirm.

Second, Petitioner has not shown extraordinary circumstances sufficient to meet the "difficult" standard for *Mapp* relief. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,⁸ but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. See, e.g., *United States v. Mett*, 41

⁸ In *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007), the court did not find extraordinary circumstances because the plaintiff there offered no reason "other than convenience, why [their] continued detention by the INS would affect th[e] Court's ultimate consideration of the legal issues presented in their petition for review." In *Daum v. Eckert*, No. 20-3354, 2021 WL 4057190, at *2 (2d Cir. Sept. 7, 2021), the court held that COVID-19 was not an extraordinary circumstance warranting bail. Other cases summarily reject assertions of extraordinary circumstances. See, e.g., *Illarramendi v. United States*, 906 F.3d 268, 271 (2d Cir. 2018); *Stolfa v. Holder*, 498 F. App'x 58, 60 (2d Cir. Aug. 16, 2012).

F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also* *Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances “seem to be limited to situations involving poor health or the impending completion of the prisoner’s sentence”).

Here, Petitioner alleges that he has experienced medical issues while in custody; namely, sadness, headaches, rashes, some loss of feeling in his right hand, and some pain in his right foot. *See* Dkt. No. 1-2 ¶¶ 21-22, 25. However, Petitioner has not demonstrated that this amounts to the type of “serious deterioration of health” that courts have identified in granting relief under *Mapp v. Reno*. *See, e.g., United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994); *Landano*, 970 F.2d at 1239 (extraordinary circumstances “seem to be limited to situations involving poor health or the impending completion of the prisoner’s sentence”); *cf. Vasquez Salgado v. Francis*, No. 25 Civ. 6524 (VEC), 2025 WL 2806757, at *6 (S.D.N.Y. Oct. 1, 2025) (finding extraordinary circumstances in a case where the petitioner suffered “severe mental health issues” and based on petitioner’s “status as a transgender female”); *id.* at *8 n.13 (noting that *Mapp* relief was based on the specific “confluence of facts presented” in that matter and that not “all mentally ill ICE detainees or all transgender ICE detainees are entitled to release while their habeas claims are pending”).

Moreover, release is not necessary to make the habeas remedy effective in this case. Here, the remedy Petitioner seeks in an order directing his immediate release or a bond hearing at which ICE would bear the burden of demonstrating danger or flight risk. Petitioner has not demonstrated

why a grant of interim release is necessary to make such remedy effective. Petitioner can continue to pursue immigration relief in his removal proceedings, and Petitioner's detention pending resolution of his removal case is mandatory by law. No habeas remedy lies, for the reasons already given, and thus *Mapp* release is not necessary to make a remedy effective. Other courts have grappled with this requirement. *See, e.g., Evangelista v. Ashcroft*, 204 F. Supp. 2d 405, 407-09 (E.D.N.Y. 2002) (denying bail application because, for several reasons, petitioner "has not convinced the court that his immediate release is necessary in order to make the habeas remedy effective," even where the petitioner argued that he and his wife suffered from medical issues); *Halley v. Ashcroft*, 148 F. Supp. 2d 234, 236 (E.D.N.Y. 2001) (Denying bail application, and noting, "petitioner has not demonstrated why the grant of bail is necessary to make the discretionary Section 212(c) hearing, which guarantees neither his release from detention nor vacatur of the INS's order of removal, effective."); *cf. Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at *13 (S.D.N.Y. Mar. 2, 2020) (denying release under *Mapp* for habeas petitioner because the petitioner failed to establish the existence of extraordinary circumstances that made the grant of bail necessary to make the habeas remedy effective, given that the court was granting the relief sought in the petition for a bond hearing).

Accordingly, the Court should deny the request for release pending adjudication.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus and Petitioner's request for interim release pending adjudication of the petition.

Dated: New York, New York
November 19, 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 word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 5,464 words.