

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NOUAMANE SIDQUI,

Petitioner,

-against-

JUDITH ALMODOVAR, in her official capacity  
as Acting Field Office Director of New York  
Immigration and Customs Enforcement, *et al.* ,

Respondents.

Case No. 25 Civ. 9349 (VSB)

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

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Respondents (the “Government”) respectfully submit this memorandum of law in opposition to the Petition for a Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”), filed by petitioner Nouamane Sidqui (“Petitioner”).

### **PRELIMINARY STATEMENT**

Petitioner, a citizen and native of Morocco, is deemed by statute an applicant for admission to the United States. In August 2024, 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 without valid documentation, he was inadmissible and subject to an expedited removal order under 8 U.S.C. § 1225(b)(1). Petitioner was moved to regular removal proceedings after he showed a credible fear of persecution if he returned to Morocco, and was released from custody on conditional parole/Alternative To Detention program (“ATD”). While removal proceedings were pending, in March 2025, Petitioner was arrested, charged, and jailed for committing crimes involving strangulation, assault and property damage, all misdemeanors. In November 2025, U.S. Immigration and Customs Enforcement (“ICE”) officers arrested Petitioner, and he remains detained pending his removal proceedings.

Petitioner challenges his detention and seeks an order from this Court granting his petition for a writ of habeas corpus and requiring his immediate release or a bond hearing. Petitioner argues that his detention is unlawful because it is not necessary to detain him to ensure his presence at removal proceedings; and because he did not receive sufficient process prior to his detention by ICE, he now has no meaningful opportunity to challenge his detention.

The Petition should be denied. *First*, any claim that Petitioner’s detention violates his due process rights under the Fifth Amendment fails given that 8 U.S.C. § 1225(b)(1)(B)(ii) mandates Petitioner’s continuing detention. Petitioner, who is statutorily deemed an applicant for

admission and is in removal proceedings, falls squarely within the scope of section 1225(b)(1). *Second*, because Congress provides all the process that is due for noncitizens subject to section 1225(b)(1)(B)(ii), and because the statute does not provide a path for release on bond or on some other individualized assessment of the noncitizen by the relevant DHS officers, Petitioner's due process claim fails. *Third*, in the alternative, because Petitioner was arrested and charged with a crime identified in 8 U.S.C. § 1226(c)(1)(E)(ii), his detention is mandatory under 8 U.S.C. § 1226(c)(1). *Finally*, because Petitioner may challenge his detention by writ of habeas corpus, he has no cause of action under the Administrative Procedure Act ("APA"). Accordingly, his detention is lawful, and the Court should deny the habeas petition in its entirety.

## **LEGAL BACKGROUND**

### **A. Expedited Removal**

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 Immigration and Nationality Act (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).

Congress has authorized the Department of Homeland Security (DHS) to expeditiously remove from the United States certain inadmissible aliens. *See* 8 U.S.C. § 1225(b)(1). Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and authorizes "expedited removal proceedings" in certain circumstances. *See DHS v. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–113 (2020). Specifically, as relevant here, aliens may be eligible for expedited removal if three conditions are satisfied.

*First*, under 8 U.S.C. § 1225(b)(1)(A)(i), these aliens must be inadmissible because they either lack proper entry documents or falsified or misrepresented their application for admission. *See id.* § 1182(a)(6)(C), (a)(7) (setting forth grounds of inadmissibility). *Second*, among that group, two narrower categories of aliens may be eligible for expedited removal: (1) noncitizens “arriving in the United States”;<sup>1</sup> or (2) “certain other aliens” who “ha[ve] not been admitted or paroled into the United States” and cannot affirmatively show that they have been “physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” *Id.* § 1225(b)(1)(A)(i)-(iii). *Third*, of those “certain other aliens,” the Attorney General has designated a subset of noncitizens as being subject to expedited removal. *Id.* § 1225(b)(1)(A)(iii)(I). Specifically, in August 2024, when Petitioner crossed the border, the Attorney General had designation for expedited removal, *inter alia*, aliens apprehended within 100 air miles of any U.S. international land border who entered within the last 14 days prior to arrest.<sup>2</sup>

For those aliens placed in expedited removal, they shall be “order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution.” 8 U.S.C. §

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<sup>1</sup> Petitioner is not an “arriving alien,” which is defined at 8 C.F.R. § 1001.1(q) an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked . . . .” Petitioner did not present himself at a port of entry, and instead unlawfully crossed the border without inspection; he is thus an applicant for admission, but not an arriving alien.

<sup>2</sup> *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924, 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877, 48879 (Aug. 11, 2004).

1225(b)(1)(A)(i); *see Thuraissigiam*, 591 U.S. at 107-110 (discussing expedited removal). If the alien “indicates either an intention to apply for asylum . . . or a fear of persecution,” the inspecting officer must “refer the alien for” an interview by an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii). The asylum officer will then assess whether the noncitizen has a “credible fear of persecution,” meaning “that there is a significant possibility, taking into account the credibility of the statements made by the noncitizen in support of the claim and such other facts as are known to the officer, that the noncitizen could establish eligibility for asylum under [8 U.S.C. § 1158].” 8 U.S.C. § 1225(b)(1)(B)(v).

If the asylum officer determines that the alien has a credible fear, the officer must refer the alien to removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f). These “full” removal proceedings, *Lara-Aguilar v. Sessions*, 889 F.3d 134, 137–38 (4th Cir. 2018), conducted by an immigration judge, provide more extensive procedures including a right to appeal to the BIA and a federal appellate court. *See* 8 U.S.C. § 1252(a)(1). By comparison, front-line immigration officers conduct expedited proceedings. *See* 8 U.S.C. §§ 1225(b)(1), 1252(a)(1).

If the asylum officer determines that the alien lacks a credible fear, the alien may seek *de novo* review before an immigration judge (IJ). 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III); *see Thuraissigiam*, 591 U.S. at 110. If the IJ concludes that the alien has a credible fear, the alien is placed into full removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 1208.30(g)(2). If, on the other hand, the IJ finds that the alien lacks a credible fear, the alien is “removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I); 8 C.F.R. § 1208.30(g)(2)(iv)(A).

## **B. Detention**

Aliens who demonstrate a credible fear “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii); *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded.”). The only exception to section 1225(b)(1)(B)(ii)’s detention mandate is found in 8 U.S.C. § 1182(d)(5)(A), which allows DHS to parole aliens into the United States for “urgent humanitarian reasons or significant public benefit.” *See Jennings*, 583 U.S. at 300 (holding that the existence of § 1182(d)(5)(A)’s “express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released”). The statute does not otherwise impose “any limit on the length of detention” pending a decision on the asylum application; nor does it authorize bond hearings or release on bond. *Id.* at 297.

## **FACTUAL BACKGROUND**

### **A. Petitioner’s Immigration and Detention History**

CBP encountered Petitioner in the El Paso, Texas Border Patrol Sector on August 7, 2024, and determined that he had unlawfully entered the United States from Mexico. Ex. 1 at 2; James-Townend Decl. ¶ 4.<sup>3</sup> CBP arrested Petitioner and transported him to the CBP’s Central Processing Center in El Paso. *Id.* There, Petitioner admitted that he was a citizen of Morocco who had illegally crossed the United States-Mexican border without being inspected by an immigration officer and without legal documents to enter, pass through or remain in the United

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<sup>3</sup> All exhibits (“Ex.”) are attached to the Government Return, dated November 20, 2025. Filed herewith is the Declaration of Deportation Officer Justin James-Townend, dated November 20, 2025 (“James-Townend Decl.”).

States. James-Townend Decl. ¶ 5; Ex. 1 at 2-3. Petitioner did not express fear of returning to Morocco or an intention to apply for asylum. Ex. 1 at 3.

Shortly thereafter, CBP officers placed Petitioner in expedited removal under section 1225(b)(1). James-Townend Decl. ¶ 6; Ex. 1 at 3-4. On August 10, CPB served Petitioner with two documents: a Notice and Order of Expedited Removal issued pursuant to 8 U.S.C. § 1225(b)(1), Ex. 2; and a Notice to Alien Ordered Removed/Departure Verification, giving notice that because he was found inadmissible under section 1225(b)(1) and ordered removed, he was prohibited from entering the United States for five years from the date of his removal. Ex. 3; James-Townend Decl. ¶ 6. To execute the Order of Expedited Removal, on August 19, 2024, Petitioner was transferred to the Otero County Processing Center in New Mexico. James-Townend Decl. ¶ 7.

Two days later, on August 21, 2024, Petitioner stated that he feared persecution if he returns to Morocco. James-Townend Decl. ¶ 8. He was referred for a credible-fear interview with an asylum officer from U.S. Citizenship and Immigration Services (“USCIS”), *see* 8 U.S.C. § 1225(b)(1)(A)(ii) (aliens who “indicate[] either an intention to apply for asylum . . . or a fear of persecution” shall be referred for an interview under § 1225(b)(1)(B)), and an asylum officer determined that Petitioner had a credible fear of persecution. James-Townend Decl. ¶ 8.

Consequently, on August 28, 2024, USCIS issued Petitioner a Notice to Appear (“NTA”), the charging document used to commence removal proceedings, which vacated the Notice and Order of Expedited Removal (Ex. 2) and placed Petitioner into removal proceedings under 8 U.S.C. § 1229a. James-Townend Decl. ¶ 9; Ex. 4. The NTA charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), due to inadequate documentation at the time of

application for admission<sup>4</sup>; and inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled, or one who arrived in the United States at any time or place other than as designated by the Attorney General. James-Townend Decl. ¶ 9; Ex. 4. The NTA ordered Petitioner to appear at the Otero Immigration Court in Chapparral, New Mexico, on September 17, 2024. James-Townend Decl. ¶ 10; Ex. 4. As an applicant for admission with a credible fear of persecution, Petitioner's detention was governed by 8 U.S.C. § 1225(b)(1)(B)(ii).

After the NTA was issued, Petitioner altered procedural aspects of the removal proceedings in September and October 2024. Petitioner appeared for the September 17, 2024, initial hearing at the Otero Immigration Court. James-Townend Decl. ¶ 11. Two days later, on September 19, he was enrolled in the Alternative To Detention ("ATD") Wrist Worn GPS Program and released from the Otero County Processing Center in New Mexico. James-Townend Decl. ¶ 12. The next day, September 20, Petitioner was released on parol from the Otero County Processing Center in New Mexico. *Id.* ¶ 13; Ex. 5. The following week, on September 28, Petitioner filed a change of address form, giving notice that he had moved residences to New York City. James-Townend Decl. ¶ 14. On October 1, 2024, Petitioner reported to the Queens office of BI Incorporated, the contractor which manages ICE's Intensive Supervision Appearance Program ("ISAP"). James-Townend Decl. ¶ 16. His supervision level was monthly reporting on his personal phone. *Id.* On October 9, Petitioner filed a motion seeking to transfer the case from New Mexico to the immigration court in New York City. James-Townend Decl. ¶ 17. Petitioner also filed an Application for Asylum (Form I-589). *Id.* At the end

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<sup>4</sup> As explained above, *supra* 2, admission means the lawful entry of a noncitizen into the United States; those noncitizens who have not been admitted are considered applicants for admission.

of the month, on October 25, the immigration court granted the venue motion and scheduled Petitioner's next master calendar hearing for April 8, 2026 at 26 Federal Plaza. James-Townend Decl. ¶ 18.

Petitioner had poor compliance with the ISAP program. Petitioner satisfied the monthly reporting requirements for only five months, from October 2024 to February 2025. James-Townend Decl. ¶ 19. In October 2025 he was terminated from the ISAP program. *Id.* ¶ 23.

On March 21, 2025, Petitioner was arrested by the New York City Police Department in Queens, for crimes involving strangulation, assault and property damage. James-Townend Decl. ¶ 20. Petitioner was later arraigned in Queens County Criminal Court and charged with the following offenses: New York Penal Law ("NYPL") 121.11(A) (Criminal Obstruction of Breathing or Blood Circulation-Apply Pressure); NYPL §120.00(01) (Assault in the 3rd Degree, with Intent to Cause Physical Injury); NYPL §145.00(01) (Criminal Mischief, Intent to Damage Property); and NYPL § 240.26(01) (Harassment in the Second Degree, Physical Contact). Petitioner remained in jail for 10 days until, on March 31, he was released on his own recognizance despite ICE having lodged an immigration detainer with New York City Queens Central Booking. James-Townend Decl. ¶ 22.<sup>5</sup>

Seven months later, on November 7, 2025, ICE arrested Petitioner at the ISAP office in Queens, pursuant to a Form I-200, Warrant of Arrest of Alien. James-Townend Decl. ¶ 24; Ex. 6. Petitioner was brought to 26 Federal Plaza for processing and temporary holding until bedspace at another facility became available. James-Townend Decl. ¶ 25. The following day bedspace

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<sup>5</sup> Counsel for Petitioner has provided to Government counsel a photograph of a document purportedly showing that these charges were dismissed in July 2025 (attached hereto).

was secured for Petitioner at the Orange County Jail in Goshen, New York, where he remains detained. James-Townend Decl. ¶ 26.

### **B. Habeas Petition and Procedural Background**

Petitioner commenced this action by filing the Petition on November 9. ECF No. 1. On November 12, the Court issued an order directing that Petitioner not be transferred outside of the Southern District of New York, Eastern District of New York and District of New Jersey “unless and until the Court orders otherwise.” ECF No. 4. The Court also ordered respondents to show cause why the Petition should not be granted. *Id.*

Petitioner asserts that his detention violates his substantive and procedural due process rights under the Fifth Amendment, *see* Pet., Counts One and Two; and is contrary to his civil and statutory rights, in violation of the Administrative Procedure Act (“APA”), Pet. Count Three. According to Petitioner, the Government is detaining him under 8 U.S.C. § 1226(a) but without affording him the opportunity to obtain a release on bond pending his removal proceedings as required, based on an individualized assessment that he would not pose a flight risk or a danger to the community. *See* Pet. at 6 (¶ 5), 7 (¶ 11). Because he allegedly did not receive sufficient process prior to his detention by ICE, he has “remained detained without the ability to present himself at a bond hearing” and has no meaningful opportunity to challenge his detention.” Pet. at 2. Petitioner seeks an order from this Court granting his petition for a writ of habeas corpus and requiring his immediate release or a bond hearing before an Immigration Judge; and awarding attorney’s fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412. *See* Pet., Prayer for Relief.

## ARGUMENT

### A. Petitioner's Detention Is Governed by 8 U.S.C. § 1225(b)(1)(B)(ii)

Contrary to Petitioner's assertion, Pet. at 6 (¶ 6), his detention is governed by 8 U.S.C. § 1225(b)(1)(B)(ii). This provision mandates that Petitioner remain in detention during 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)(1)(A)(i), noncitizens placed in expedited removal shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." Here, Petitioner was subject to expedited removal given his unlawful entry and apprehension by CBP near the border, but because he claimed a fear of persecution and passed the credible-fear screening process, Congress mandated his detention pending his removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien shall be detained for further consideration of the application for asylum."); *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018) ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

The premise of Petitioner's writ application – that although originally placed in expedited proceedings, his transfer to full removal proceedings after establishing a credible fear makes him eligible for a bond – is inconsistent with the statutory text and foreclosed by *Jennings*. Section 1225(b)(1)(B)(ii) provides that, if an alien in expedited proceedings establishes a credible fear, he "shall be detained for further consideration of the application for asylum." "The word 'shall' generally imposes a nondiscretionary duty." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357 (2018). Petitioner's premise suggests a nonsensical operation of the statutory provisions. If section

1225(b)(1)(B)(ii) governed detention only until the beginning of full removal proceedings, then another provision, section 236, would govern detention during those proceedings. Section 236, however, permits detention only on an arrest warrant issued by DHS. INA § 236(a). The result would be that, if noncitizens were placed in expedited proceedings, DHS could detain them without a warrant, but, if the noncitizens were then transferred to full proceedings, DHS would need to issue an arrest warrant to continue detention. That interpretation has been rejected by the Supreme Court.

In *Jennings*, a class of aliens in removal proceedings – including aliens transferred from expedited to full proceedings after establishing a credible fear – argued that the Immigration and Nationality Act did not permit their “prolonged detention in the absence of . . . individualized bond hearings.” 583 U.S. at 291 (cleaned up). The class acknowledged that section 1225(b)(1)(B)(ii) provides that a transferred alien “shall be detained for further consideration of the application for asylum.” The class argued, however, that “the term ‘for’ . . . mandates detention only until the start of [full] proceedings.” *Id.* at 301. Once those proceedings begin, the class continued, section 1226 applies, under which transferred aliens are generally eligible for bond and thus entitled to bond hearings. *Id.* at 301. The Court rejected that argument as “incompatible with the rest of the statute.” *Id.* at 302. If the class were right about when sections 1225 and 1226 apply, “then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the [Secretary] would have to issue an arrest warrant in order to continue detaining the alien.” *Id.* But “that makes little sense.” *Id.* In evaluating whether transferred aliens are eligible for bond, the Court also considered section 1182 (d)(5)(A)’s parole exception. “That express exception to detention,” the Court reasoned, “implies that there are no *other* circumstances under which aliens detained under § 1225(b) may

be released.” *Id.* at 844 (emphasis in original). The Court confirmed that the statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 (“[Sections] 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

#### **B. Petitioner Is Not Entitled to a Bond Hearing**

As a result of his mandatory detention, Petitioner is not entitled to a bond hearing. *See Jennings*, 583 U.S. at 297. The Supreme Court “has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). Because applicants for admission, such as Petitioner, have not been admitted to the United States, their constitutional rights are truncated: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citation omitted); *see also Thuraissigiam*, 591 U.S. at 140 (under the Due Process Clause, applicants for admission have “only those rights regarding admission that Congress has provided by statute”). Here, “the procedure authorized by Congress,” *Mezei*, 345 U.S. at 212, in section 1225(b) and related provisions expressly excludes the possibility of a bond hearing, and as such, no further process is due.

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

had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08.

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

Though he was physically present in the United States when he was arrested, because Petitioner entered the United States unlawfully and was never admitted into the country, he is "treated, for constitutional purposes, as if stopped at the border." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Thus, he is entitled to the procedure authorized by Congress, and no more. And the procedure Congress has established for applicants for admission like Petitioner does not include any right to a bond hearing. Instead, for applicants for admission who claim a fear of persecution, "[i]f the officer determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum," which happens in the context of removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). That is, Congress has provided that Petitioner shall be detained for removal

proceedings before an immigration judge, which afford Petitioner numerous procedural protections.<sup>6</sup> *See* 8 U.S.C. § 1229a.

Noncitizens detained under 8 U.S.C. § 1225(b)(1)(B)(ii) generally cannot be released from custody during their removal proceedings. The exclusive means of release for an applicant for admission under the statute is the Department of Homeland Security's discretionary parole authority. *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate). As the Supreme Court has emphasized, "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297. Petitioner is therefore lawfully detained pursuant to section 1225(b)(1)(B)(ii) and is not entitled to a bond hearing.

Petitioner complains that he was entitled to – but did not receive – proper notice or any way to challenge his detention including access to a bond hearing before an Immigration Judge. *See* Pet. at 6 (¶ 5). According to Petitioner, if given this opportunity, he would have established that he posed no safety threat to the public nor any risk of failing to appear for Immigration

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<sup>6</sup> During removal proceedings, aliens may apply for various forms of relief or protection from removal, such as asylum, withholding of removal, and protection under the Convention Against Torture. *See, e.g.*, 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). The decision whether to order such an alien removed is made by an immigration judge (not an immigration officer). 8 U.S.C. § 1101(b)(4); 8 U.S.C. § 1229a (a)(1). Aliens may obtain continuances during their proceedings for good cause. 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to "examine the evidence against [them]," "to present evidence," and "to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. §§ 1240.7(a), 1240.46(c). Aliens ordered removed may ask the immigration judge to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They also have a right to appeal to the BIA. 8 U.S.C. § 1229a(c)(5); 8 C.F.R. §§ 1003.1(b), 1003.38(a). If an alien appeals and the BIA enters a final removal order, the alien may file a petition for review in a court of appeals, 8 U.S.C. § 1252, and thereafter seek review in the Supreme Court, 28 U.S.C. § 1254(1).

Court proceedings. *See id.* at 7 (¶ 22). (As noted below, *infra* 21-22, 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 an order directing his immediate release or a bond hearing. *See* Pet., Prayer for Relief.

But these individualized assessments provided in section 1226(a), are unavailable to Petitioner because his detention is statutorily mandated by section 1225(b)(1)(B)(ii), as discussed above.

### **C. Petitioner’s Due Process Rights Have Not Been Violated**

For similar reasons, Petitioner’s claim that his due process rights have been violated is mistaken. 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)(1)(B)(ii), 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”).

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 . . . 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) (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) (holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *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 noncitizens. *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 Immigration and Nationality Act, 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*, 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. For more than a century, the immigration laws

have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). “Detention during removal proceedings is a constitutionally valid aspect of the deportation process.” *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 (“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.”).

The Government is aware that another judge in this district has held that noncitizens subject to mandatory detention under section 1225(b) have a constitutional right to a bond hearing under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). *See Al-Thuraya v. Warden*, 25 CV 2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully disagrees with that decision, and believes the decision in *Poonjani* and *Mendez Ramirez*, *see supra* 15, represent correct readings of the law. Further, *Black* involved an alien detained under Section 1226(c), rather than Section 1225(b), and regardless, the petitioner in *Al-Thuraya* had been detained for significantly longer than Petitioner in this case. 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* 14-16. In *Al-Thuraya*, the district 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 of Mezei without a hearing and reversed the district court’s order that he be released on bond. *See Mezei*, 345 U.S. at 207–08. It was in this context that the Supreme Court explained that “an alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.’” *Mezei*, 345 U.S. at 212 (quoting *U.S. ex rel. Knauff*, 338 U.S. at 544). The entry fiction is not limited to “the political branches’ authority to legally admit or exclude noncitizens” as stated in *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.<sup>7</sup>

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<sup>7</sup> 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). The

Petitioner's due process claims should therefore be denied.

**D. Alternatively, Petitioner Is Lawfully Detained Under Section 1226(c)**

If the Court determines that section 1225(b)(1)(B)(ii) no longer applies to Petitioner, Petitioner's detention would nonetheless be mandatory under 8 U.S.C. § 1226(c)(1)(E). Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288. Congress amended Section 1226 earlier this year via the Laken Riley Act. *See* Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (adding 8 U.S.C. § 1226(c)(1)(E)). The amendment to Section 1226 mandates detention of noncitizens if two conditions are met. *See* 8 U.S.C. § 1226(c)(1)(E). *First*, the noncitizens must be inadmissible because they are present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), obtained documents or admission through misrepresentation or fraud, *id.* § 1182(a)(6)(C), or lack valid documentation, *id.* § 1182(a)(7). *See* 8 U.S.C. § 1226(c)(1)(E)(i). *Second*, the noncitizen "is charged with, is arrested for, is convicted of, admits having committed, or admits committed acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E)(ii). Notably, the Laken Riley Act does not require a conviction to bring an alien within its ambit; arrest is sufficient.

Petitioner is subject to mandatory detention because both criteria under section 1226(c)(1)(E) are met. As to the first condition, Petitioner is inadmissible under 8 U.S.C. § 1182(a)(7)(I) because he lacked proper entry documents when crossing the border. *Supra* 5. As

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Government submits that the matter was wrongly decided and respectfully disagrees with that court's decision.

to the second condition, on March 21, 2025, Petitioner was arraigned for crimes involving strangulation, assault and property damage. James-Townend Decl. ¶ 21. In particular, Petitioner was arrested and charged with criminal obstruction of breathing or blood circulation, a crime under NYPL § 121.11(A) and class A misdemeanor.

Under NYPL § 121.11(A), “a person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she [a] applies pressure on the throat or neck of such person; or [b] blocks the nose or mouth of such person.” NYPL § 121.11(A) requires, as an “essential element” (8 U.S.C. § 1226(c)(1)(E)), the occurrence of serious bodily injury, *i.e.*, that the prohibited conduct supports an inference of intent to “impede normal breathing or circulation.” Conduct found to satisfy this intent element involves “serious bodily injury” as required under 1226(c)(1)(E). *See, e.g., Matter of Deandre A.*, 70 N.Y.S.3d 556, 557 (2d Dep’t 2018) (evidence was sufficient where “appellant put his hands around the neck of a social worker and applied pressure, and also covered her nose and mouth, causing her pain and leaving her with red marks on her neck and nose”); *Matter of Kenrick C.*, 40 N.Y.S.3d 64, 64 (1st Dep’t 2016) (“evidence that appellant threw his sister to the floor and began ‘squeezing’ her neck until she could barely breathe . . . supported a reasonable inference of intent to ‘impede the normal breathing or circulation of the blood of another person’”); *People v. Carte*, 976 N.Y.S.2d 594, 597 (3d Dep’t 2013) (“intent to interfere with the victim’s breathing could be readily inferred from defendant’s conduct in choking her while covering her nose and mouth with pizza and/or his hand”). Thus, ICE’s detention of Petitioner is mandatory under Section 1226(c)(1)(E).<sup>8</sup>

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<sup>8</sup> Although noncitizens subject to mandatory detention are not statutorily entitled to bond hearings, they may receive hearings before an immigration judge where they can contest whether they are properly subject to mandatory detention. 8 C.F.R. § 1003.19(h)(2)(ii); *Matter of Joseph*,

Further, Petitioner's mandatory detention under section 1226(c) comports with due process. The Second Circuit has recognized that such detention is justified by two "legitimate" and "importan[t]" interests: "(1) ensuring the noncitizen's appearance at proceedings, and (2) protecting the community from noncitizens who have been involved in crimes that Congress has determined differentiate them from others." *Black*, 103 F.4th at 153. While it is true that the balance of interests can shift towards a noncitizen if "detention is prolonged without any particularized assessment of need," that is not the case here where Petitioner has only been detained for a "relatively short-term" period of 14 days. *Id.* at 154. On the other hand, ICE has demonstrated a "particularized need" for detaining Petitioner, consistent with the Congressional mandate to detain such individuals under the Laken Riley Act. *Black*, 103 F.4th at 153. Accordingly, Petitioner cannot maintain that mandatory detention at this time under section 1226(c) would violate due process.

**E. Should the Court Determine that Petitioner is Detained Pursuant to Section 1226(a), Petitioner May Challenge His Detention Through a Bond Hearing**

If the Court nevertheless determines that Petitioner's current detention is governed by Section 1226(a), as opposed to either Section 1225(b)(1)(B)(ii) or Section 1226(c), then Petitioner would be entitled to receive a bond hearing in immigration court for a determination of whether he presents a danger to others or a flight risk. In that event, Petitioner should be required to exhaust his challenges to his detention in immigration court before this Court orders outright release. *See, e.g., Perez v. Francis*, No. 25 CV 8112 (JGK), 2025 WL 3110459, at \*3 (S.D.N.Y. Nov. 6, 2025) (in similar case, holding that "the petitioner should first exhaust his remedies

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22 I. & N. Dec. 799, 805 (BIA 1999) (explaining that the "purpose of the regulation . . . is to provide an alien . . . with the opportunity to offer evidence and legal authority on the question whether [DHS] has properly included him within a category that is subject to mandatory detention").

through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition”); *see also Sun v. Almodovar*, No. 25 CV 9262 (PKC), ECF No. 14 at 6 (Opinion & Order) (S.D.N.Y. Nov. 20, 2025) (ordering a bond hearing be held: “Because petitioner Enbin Sun is being detained pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a)”).

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”).

Under section 1226(a), when an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). 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.<sup>9</sup> *See* 8 C.F.R. § 1003.19. Such a hearing would provide constitutionally sufficient process for Petitioner’s continued detention. *See Velasco Lopez*, 978 F.3d at 855.

To the extent the Court determines that Petitioner is detained pursuant to Section 1226(a), Petitioner should be required to exhaust his administrative remedies through a bond hearing before obtaining relief from a federal court. He is represented by counsel here. 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

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<sup>9</sup> To be clear, in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025), where the BIA determined that Immigration Judges lacked the authority to hold a bond hearing for noncitizens detained under section 1225(b), a holding from this Court in Petitioner’s individual case that he was detained under § 1226(a) would be required for Petitioner to then request and receive the bond hearing.

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).<sup>10</sup>

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.

#### **F. Petitioner’s Detention Does Not Violate the Administrative Procedure Act**

Petitioner identifies the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq. as a basis for federal jurisdiction. Pet. at 8 (¶¶ 14-15). That is, DHS detaining him without a bond hearing is allegedly unlawful as not being authorized under the INA, and contrary to his rights under the Fifth Amendment. But the APA permits judicial review of agency action only when,

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<sup>10</sup> 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 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.

*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 ‘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.

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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 and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 8,020 words.