

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

QIWEI WENG,

Petitioner,

v.

KENNETH GENALO, *et al.*,

Respondents.

Case No. 25 Civ. 9595 (JHR)

**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 Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”) filed on behalf of petitioner Qiwei Weng (“Petitioner”) on November 17, 2025.

PRELIMINARY STATEMENT

Petitioner is an applicant for admission from China who was apprehended by officers of the United States Department of Homeland Security (“DHS”) near Tecate, California in November 2024, after he unlawfully entered the United States. Because he is an alien who entered the United States without inspection or admission who was deemed inadmissible at that time, 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 removal proceedings and to release him on his own recognizance in the interim.

On November 17, 2025, when Petitioner reported for his scheduled check-in with ICE, ICE revoked Petitioner’s order of release on recognizance. As an applicant for admission, his detention is governed by INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

Petitioner argues that his detention should be governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and so his mandatory detention violates his substantive due process rights under the Fifth Amendment, procedural due process rights pursuant to *Mathews v. Eldridge*, and the Immigration and Nationality Act (“INA”). The petition should be denied. Because he is an applicant for admission in removal proceedings, Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2)(A), which provides for mandatory detention and potential release only on discretionary parole by DHS.

To the extent the Court holds that Petitioner's detention is governed by 8 U.S.C. § 1226(a), as Petitioner argues, Petitioner would then be entitled to a bond hearing before an immigration judge, which would afford him sufficient process to contest his detention. At a bond hearing, an immigration judge would assess whether Petitioner presents a danger to the community or a flight risk. Thus, the proper remedy would be a bond hearing, not outright release.

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)). "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. 2011).

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 Gen. 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.”) (“illegal 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). IIRIRA replaced the focus on physical “entry” with a focus on lawful “admission.” 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). 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, 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 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)(A) mandates detention during removal proceedings, 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 . . . 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. Pursuant to 8 U.S.C. § 1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings.¹ *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to

¹ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain or authorize bond for aliens under § 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

detain the arrested alien” during the pendency of removal proceedings). Under Section 1226(a)(1), “[t]o secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)(2020)); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

FACTUAL BACKGROUND

I. Petitioner’s Immigration and Detention History

Petitioner is a native and citizen of China who unlawfully entered the United States on or before January 11, 2024. *See* Declaration of Supervisory Detention and Deportation Officer Khristopher Dawson (“Dawson Decl.”) ¶ 3. On or about November 9, 2024, U.S. Customs and Border Protection (“CBP”) encountered Petitioner in Tecate, California and determined that he unlawfully entered the United States at or near Tecate, California. *Id.* ¶ 4. On November 10, 2024, CBP served Petitioner with a Notice to Appear (“NTA”), the charging document used to commence removal proceedings, charging him as inadmissible under Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 5. Petitioner was released on recognizance at the border due to a lack of detention space. *Id.* ¶ 6. On January 3, 2025, Petitioner filed an application for relief with the immigration court. *Id.* ¶ 9.

On November 17, 2025, when Petitioner reported for his scheduled check-in with ICE, ICE revoked Petitioner’s order of release on recognizance and took him into custody at 26 Federal Plaza, New York, New York, pursuant to INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 10.

During processing Petitioner was served with an I-200 Warrant for Arrest dated November 17, 2025. *Id.* ¶ 10. On November 17, 2025, ICE transferred Petitioner from 26 Federal Plaza to the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, New Jersey, where he is currently detained. *Id.* ¶¶ 12, 13.

II. The Habeas Petition and Procedural Background

On November 17, 2025, Petitioner filed his Petition. ECF No. 1. On November 18, the Court ordered the Government to respond to the Petition by November 21, 2025. ECF No. 3.

In the Petition, Petitioner argues that his detention under 8 U.S.C. § 1225(b) violates his substantive due process rights under the Fifth Amendment, Pet. ¶¶ 28–32, procedural due process rights pursuant to *Mathews v. Eldridge*, Pet. ¶¶ 33–37, and the INA, Pet. ¶¶ 38–39. As ultimate relief, Petitioner requests that the Court order ICE to release Petitioner from custody, Pet., Prayer for Relief, or, alternatively, order that Petitioner be provided a bond hearing before an immigration judge, Pet. ¶ 32.

ARGUMENT

I. PETITIONER IS LAWFULLY DETAINED PURSUANT TO SECTION 1225(B) AND NOT ENTITLED TO A BOND HEARING

Contrary to Petitioner's argument, Pet. ¶¶ 3, 5, 31, 36, Petitioner's detention is governed by 8 U.S.C. § 1225, which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a."

Petitioner falls within the ambit of section 1225(b)(2)(A)'s mandatory detention requirement. First, Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" 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 he is present in the United States without being admitted or paroled, he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

This reasoning comports with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which explains that 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—on the other hand, 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)(2)(A) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) . . .

mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

Petitioner argues that Section 1226(a), rather than Section 1225(b)(2)(A), applies, and he is therefore eligible to receive a bond hearing before an immigration judge. *See, e.g.*, Pet. ¶¶ 3, 31.² However, after IIRIRA, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry.’” *Thuraissigiam*, 591 U.S. at 140. Thus, as a statutory matter Petitioner falls within the ambit of Section 1225(b)(2)(A).

² While not unanimous, courts throughout the country, including in this district, have endorsed the argument that Section 1226(a) governs detention under similar circumstances. *See, e.g.*, *Guzman Cardenas v. Almodovar*, No. 25 Civ. 9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) (granting habeas petition based on conclusion that petitioner’s detention was pursuant to Section 1226(a) rather than Section 1225(b)); *Huamani v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (same); *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); *Guzman Andujar v. Ladeon Francis*, No. 25 Civ. 9199 (JLR), 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025) (same); *Comes v. DeLeon*, No. 25 Civ. 9283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) (same); *Rueda Torres v. Francis*, No. 25 Civ. 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) (same); *Ortiz-Lopez v. Francis*, 25 Civ. 7985 (KPF), ECF No. 14 (S.D.N.Y. Nov. 6, 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 Mejia Olalde v. Noem*, No. 25-cv-168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (determining that section 1225(b)(2)(A) governed); *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) (SBC), 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (discussing interplay between Sections 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to Section 1226(a)).

Petitioner was released on his own recognizance pursuant to section 1226(a)(2)(B) after his unlawful entry in November 2024. But his release did not constitute an “admission” into the United States. Thus, he “cannot be said to have ‘effected an entry,’” *Thuraissigiam*, 591 U.S. at 140, and by statute he is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), treated for constitutional purposes as if stopped at the border. Though Petitioner was released on his own recognizance, his status as an applicant for admission has remained unchanged. Petitioner’s release was revoked on November 17, 2025, when ICE again arrested him. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, he was arrested and his detention is mandatory pursuant to Section 1225(b)(2)(A). *See Hurtado*, 29 I. & N. Dec. at 220 (alien 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

Reading Section 1225(b)(2)(A) to mandate detention for any “applicant for admission” is in accordance with the plain meaning of the text as enacted by Congress in IIRIRA. *See Vargas Lopez v. Trump*, 25 Civ. 526, 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”); *accord Mejia Olalde v. Noem*, No. 25 Civ. 168 (JMD), 2025 WL 3131942 (E.D. Mo.

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.”).

Nov. 10, 2025). This reading does not render Section 1226 superfluous as that provision continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See Chavez*, 2025 WL 2730228, at *5 (observing that “[h]eeding the plain language of the statute . . . does not contradict or render superfluous § 1226, as Petitioners urge,” explaining that “§ 1226 ‘generally governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission’” (quoting *Jennings*, 583 U.S. at 288)). And it maintains the dichotomy prescribed by Congress in 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.

Petitioner is lawfully detained pursuant to Section 1225(b)(2)(A), and thus he 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*, 459 U.S. 32 (citing cases). 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,” *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. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”).

Applicants for 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 like Petitioner, "if the

examining immigration officer determines that [the alien] is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 240 [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A) (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.⁴ *See* 8 U.S.C. § 1229a.

Aliens detained under 8 U.S.C. § 1225(b)(2)(A) generally cannot be released from custody during their removal proceedings. The exclusive means of release for an applicant for admission under the statute is DHS’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) and is not entitled to a bond hearing.

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, 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).

Petitioner's claims therefore fail.

II. PETITIONER'S DETENTION COMPORTS WITH DUE PROCESS

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)(2)(A), 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").

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 ("prior to 1907 there was no provision

permitting bail for *any* aliens during the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings “would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”).

Because Petitioner’s detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A), *see Jennings*, 583 U.S. at 298-301, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212. To the extent Petitioner argues that his detention under Section 1225 violates his due process rights because DHS released him on conditional parole 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 is aware 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). 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 believes the decision in *Poonjani* and *Mendez Ramirez*, see *supra*, 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. 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.⁵

Petitioner’s due process claims should therefore be denied.

III. SHOULD THE COURT DETERMINE THAT PETITIONER IS DETAINED PURSUANT TO SECTION 1226(A), PETITIONER MAY CHALLENGE HIS DETENTION THROUGH A BOND HEARING

If the Court nevertheless determines that Petitioner’s current detention is governed by Section 1226(a), the Petitioner would be entitled to receive a bond hearing in immigration court for a determination whether he presents a danger to others or a risk of flight. In that event, Petitioner he 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 Civ. 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 through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition”); *see also Sun v. Almodovar*, No. 25 Civ. 9262 (PKC), 2025 WL 3241268, at *3 (S.D.N.Y. Nov. 20, 2025) (“Because petitioner Enbin Sun is being detained

⁵ Additionally, at least one judge in this district addressing a similarly situated petitioner has determined that, even if Section 1225 governs, the petitioner’s due process rights were violated. *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025). DHS submits that the matter was wrongly decided and respectfully disagrees with the court’s decision.

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").

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

⁶ In addition to bond, the Government may release an alien detainee on his own recognizance under Section 1226(a)(2)(B), which is a form of conditional parole. *See Matter of Cabrera-Fernandez*, 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).

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(b)(2)(A), ICE nevertheless has authority to detain Petitioner pursuant to Section 1226(a), and Petitioner may then request a bond hearing for a determination as to whether he presents a danger to others or a risk of flight.⁷ *See* 8 C.F.R. § 1003.19. Such hearing would provide constitutionally sufficient process for Petitioner’s continued detention. *See Velasco Lopez*, 978 F.3d at 855.

Thus, if 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. While “[t]here is no statutory requirement that a habeas

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 (alternatively, the Court’s order could direct that Petitioner receive such a bond hearing).

petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), “district courts in this Circuit have recognized such a requirement as a prudential matter,” *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025) (internal quotation marks omitted) (requiring exhaustion for habeas petitioner detained under § 1226(a)). *See also Capunay Guzman v. Joyce*, 786 F. Supp. 3d 865, 869–71 (S.D.N.Y. 2025) (same); *Fontanelli ex rel. Bernal Garcia v. Francis*, No. 25 Civ. 7115 (JLR), 2025 WL 2773234, at *5–8 (S.D.N.Y. Sept. 29, 2025) (same).

Where the exhaustion requirement is “judicially imposed instead of statutorily imposed,” certain exceptions permit courts to excuse a party’s failure to exhaust administrative remedies, including when: “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (internal quotation marks omitted). However, “[e]xhaustion is the rule, waiver the exception.” *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992). These exceptions do not apply here, where Petitioner will have access to a bond hearing if the Court determines that his detention is properly under Section 1226(a), not Section 1225. Petitioner should therefore be required to request a bond hearing before an immigration court before this Court grants his release.

CONCLUSION

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

Dated: New York, New York
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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), and the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 7,654 words.