UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZHEN LIN,

Petitioner,

v.

JUDITH ALMODOVAR, Field Office Director of Enforcement and Removal Operations, *et al.*,

Respondents.

No. 25 Civ. 9639 (MKV)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO 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 Zhen Lin ("Petitioner").

PRELIMINARY STATEMENT

Petitioner is a Chinese national who was apprehended by United States Customs and Border Protection ("CBP") last year in California after unlawfully crossing the border. He lacked any documentation that would allow him to enter the United States, and so CBP issued him an expedited removal order. But Petitioner claimed a fear of return to China, and under the statutory process in place for aliens with such claims, he was given a credible fear interview with an asylum officer, at which he was determined to have a positive credible fear. As a result, by statute, Petitioner was placed into removal proceedings to pursue an asylum application before an Immigration Judge.

For this scenario, Congress has explicitly answered the question of a non-citizen's detention during the duration of such proceedings. Specifically, as set forth in 8 U.S.C. § 1225(b)(1)(B)(ii) and accompanying provisions, Congress has mandated the detention of non-citizens such as Petitioner, subject only to discretionary parole by the Department of Homeland Security ("DHS"), and its component, U.S. Immigration and Customs Enforcement ("ICE"). Because ICE is not exercising that parole discretion here, Petitioner's detention is mandatory.

In the Petition, Petitioner asserts that his detention violates the Immigration and Nationality Act ("INA") and his Fifth Amendment due process rights. Petitioner's arguments, however, are rooted in a mistaken premise. Petitioner argues that he is not subject mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner's detention, however, is not governed by that provision. Further, Petitioner advances no arguments as to why detention under Section 1225(b)(1)(B)(ii) is improper. It is not. Thus, the Court should deny the Petition.

LEGAL BACKGROUND

If an alien "arriv[es]" in the United States, and an immigration officer determines that the alien is inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7), the alien is subject to streamlined removal procedures, often known as "expedited removal." *See* 8 U.S.C. § 1225(b)(1)(A)(i). Relevant here, Section 1182(a)(7)(A)(i)(I) renders inadmissible an alien who lacks a valid visa or entry document. Under those circumstances, the immigration officer "shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of prosecution" 8 U.S.C. § 1225(b)(1)(A)(i). If an alien arrives at the border and is subject to expedited removal, but expresses an intention to apply for asylum and subsequently passes a credible fear interview, that asylum application will be reviewed by an immigration judge in removal proceedings under INA § 240, 8 U.S.C. § 1229a8. *See* 8 U.S.C. § 1158(d) (Attorney General shall establish procedures for consideration of asylum applications); 8 C.F.R. § 208.30(f) ("If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim.")

While the asylum application is pending in immigration court, the alien is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which provides that "the alien shall be detained for further consideration of the application for asylum." However, at its sole discretion, DHS "may" parole into the United States "any alien applying for admission," "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 235.3(b)(2)(iii) (noting that alien in expedited removal proceedings with credible fear "shall be detained" during removal proceedings, and providing standard for parole). Pursuant to DHS regulations, parole may be terminated for various reasons, including "at the expiration of the time for which parole was authorized" or "upon accomplishment of the purpose for which

parole was authorized or when in the opinion of one of the [relevant Government officials], neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States . . . upon written notice to the alien." 8 C.F.R. § 212.5(e).

FACTUAL BACKGROUND

I. Petitioner's Immigration and Detention

CBP encountered Lin in or near Otay Mesa, California, on November 12, 2024, and determined that he had unlawfully entered the United States on or around the same date. *See* Declaration of Deportation Officer Mincheol So ("So Decl.") ¶ 4, 5-6; Ex. 1.[1] CBP determined Petitioner was inadmissible to the United States and processed for expedited removal. *Id.* Petitioner also received a credible fear interview, which allowed him to be placed into removal proceedings to pursue an asylum application. So Decl. ¶¶ 5-6. On December 13, 2024, CBP served Petitioner with a Notice to Appear ("NTA"), the document used to commence removal proceedings, charging him as inadmissible pursuant to 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 State at a time or place other than as designated by the Attorney General, and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(6)(A)(i)(I), due to inadequate documentation at the time of application for admission. *Id.* ¶ 7; Ex. 2.

On December 16, 2024, ICE served Lin with an Interim Notice Authorizing Parole (the "Interim Notice") under 8 U.S.C. § 1182(d)(5)(A). So Decl. ¶ 8, Ex 3. The Interim Notice stated that the parole authorization was valid for one year; that ICE may terminate parole on notice prior to the automatic termination date; and that parole is entirely within the discretion of ICE and can

[1] Unless otherwise noted, exhibits referenced as "Ex. __" refer to the exhibits to the Return to Habeas Petition, filed herewith.

be terminated at any time and for any reason. *Id.* The Interim Notice also stated that the parole is not valid for work authorization and is not an admission in lawful status. *See id.* Lin was thus paroled from custody and released and issued a Form I-286, Notice of Custody Determination, which documented his release under other conditions (i.e., parole). *Id.* ¶ 10, Ex. 4.

DHS commenced removal proceedings against Petitioner by serving the NTA on the Executive Office for Immigration Review. So Decl. ¶ 9. On April 16, 2025, Lin, through counsel, filed a Change of Venue request changing the Immigration Court from Houston Texas to the Immigration Court at 26 Federal Plaza, New York, New York ("26 Federal Plaza"). *Id.* ¶ 11. Additionally, on April 17, 2025, Lin, through counsel, filed an application for relief from removal with the Court at 26 Federal Plaza. *Id.* ¶ 12. On April 17, 2025, the Immigration Court granted the change of venue request, and a hearing date was set, and remains set, for May 1, 2026, at 26 Federal Plaza. *Id.* ¶ 13.

On November 19, 2025, ICE ERO, while conducting an operation in Brooklyn, New York, arrested Lin pursuant to a signed I-200 and took him into ICE custody and transported to 26 Federal Plaza for processing. *Id.* ¶ 14; Ex. 5. On November 20, 2025, Lin was transported to Elizabeth Detention Center, Elizabeth, New Jersey and then later transported on the same date to Metropolitan Detention Center, Brooklyn, New York, where he remains. So Decl. ¶ 15. On December 2, 2025, ICE issued a notice to Lin, informing him that his previous parole from ICE custody had been revoked. So Decl. ¶ 16; Ex. 6.

II. The Habeas Petition and Procedural Background

On November 19, 2025, Petitioner filed his Petition. ECF No. 1. On November 24, 2025, the Court ordered the Government to respond by December 1, 2025, and subsequently extended that deadline to December 3, 2025. ECF Nos. 4, 8.

In the Petition, Petitioner (incorrectly) asserts that his detention violates the INA because he is not subject to detention under 8 U.S.C. § 1225(b)(2)(A), and is eligible for a bond hearing under 8 U.S.C. § 1226(a) and its implementing regulations. Pet. ¶¶ 3-5, 49-55. He also asserts that his detention violates his due process rights under the Fifth Amendment. Pet. ¶¶ 56-59. As ultimate relief, Petitioner principally requests that the Court order the Government to release him from custody, provide him with a bond hearing, and declare that Petitioner's detention is unlawful. *Id.*, Prayer for Relief.

ARGUMENT

I. Petitioner Is Lawfully Detained Pursuant to Section 1225(b)(1)(B)(ii) and Not Entitled to a Bond Hearing

Petitioner argues that his detention can only be authorized by 8 U.S.C. § 1226(a), Pet. ¶¶ 5, 50, but that is incorrect. Contrary to Petitioner's argument, his detention is governed by 8 U.S.C. § 1225(b)(1)(B)(ii), 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). Petitioner is an alien who arrived at the border without valid documentation but passed the credible-fear screening and thus was placed in removal proceedings to pursue an asylum application. Under Section 1225(b)(1)(B)(ii), such aliens "*shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225 (b)(1)(B)(ii) (emphasis added).

Thus, Petitioner falls within the ambit of Section 1225(b)(1)(B)(ii)'s mandatory detention requirement. First, by statute, Petitioner is an "applicant for admission" to the United States because he is an alien present here who has not been admitted. 8 U.S.C. § 1225(a)(1). Second, because Petitioner is inadmissible under Section 1182(a)(7) for lack of a valid entry document, he was subject to expedited removal subject to the outcome of an interview with an asylum officer if he indicated a fear of persecution or an intention to apply for asylum. 8 U.S.C. § 1225(b)(1)(A).

And finally, because Petitioner did indicate such fear and an asylum officer did find that fear to be credible,[2] Petitioner is detained pursuant to Section 1225(b)(1)(B)(ii), which mandates that he "shall be" detained pending consideration of his asylum application. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 235.3(b)(4); 8 C.F.R. § 208.30(a), (d).

This reasoning comports with Supreme Court precedent. As explained in *Jennings*, applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). 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 and it mandates detention. *Id.* at 297. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of consideration of an asylum application. *See id.* at 302 ("[Section] 1225(b)(1) . . . 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), applies, and he was therefore entitled to process before being detained. Pet. ¶ 5. But this is based on the mistaken belief that Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A) following the recent decision in *Matter of Yajure Hurtado* and a change in ICE policy, Pet. ¶¶ 4-5, 30. As discussed above, however, neither of these statutory provisions applies to Petitioner who is instead unambiguously subject to Section 1225(b)(1)(B)(ii). As such, contrary to Petitioner's suggestion, this case does not present the issue that a number of judges in this District have recently considered—and which

[2] If the asylum officer had determined that Petitioner did not have a credible fear of persecution, he would have been removed from the United States "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause *shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." (emphasis added)).

is currently *sub judice* before Your Honor in the matter of *Chen v. Almodovar et al.*, 25 Civ. 8350 (MKV), and *Liang v. Almodovar*, 25 Civ. 932 (MKV)—of whether Section 1226(a) rather than Section 1225(b)(2)(A) applies to a certain category of detention.[3]

Nor could Petitioner's presence in the United States after he passed a credible-fear interview and was placed into removal proceedings to pursue an asylum application shift the statutory authority for his detention from Section 1225(b)(1)(B)(ii) to Section 1226(a). As Judge Engelmayer explained when he rejected this argument in *Sammy v. Decker*, No. 17 Civ. 2615 (PAE) (S.D.N.Y. May 25, 2017), there is no statutory support for the argument that "an alien whose asylum claim clears the initial threshold of a credible-fear determination is then toggled over to, and governed by" Section 1226(a). Ex. 1 to Memorandum of Law at 45.[4]

Petitioner was detained shortly after he unlawfully crossed the border in November 2024, and he was processed for expedited removal. So Decl. ¶ 4. Petitioner would have been removed

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[3] *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)(2)(A)); *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); *Sun v. Almodovar*, No. 25 Civ. 9262 (PKC), 2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025) (concluding that petitioner's detention was pursuant to Section 1226(a) and ordering a bond hearing).

[4] In *Sammy*, Judge Engelmayer granted the habeas petition on the ground that Section 1225(b) required a bond hearing because the petitioner had been detained "beyond the presumptively reasonable limit of six months." *See id.* at 51. That holding is no longer good law after *Jennings* and, in any event, Petitioner has been detained for less than a month. *See Jennings*, 583 U.S. at 300.

"without further hearing or review" through this streamlined process but for claiming a fear and then passing the credible-fear screening process. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(ii). He "cannot be said to have 'effected an entry,'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020), 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 parole after his arrest, his status as an applicant for admission has remained unchanged. *See United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution."). Further, on December 2, 2025, ICE revoked Petitioner's parole. So Decl. ¶ 15.

Petitioner is lawfully detained pursuant to Section 1225(b)(1)(B)(ii), and he is not entitled to bond hearing. Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Here, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Instead, for an applicant for admission who has established a positive credible fear, "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). The exclusive means of release for an applicant for admission such as Petitioner is DHS's discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Petitioner's claim alleging violation of the INA therefore fails.

II. Petitioner's Detention Comports with Due Process

Because Petitioner is an applicant for admission who was apprehended shortly after crossing the border and determined to be inadmissible, he 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." *Mezei*, 345 U.S. at 212 (citing *Knauff*, 338 U.S. at 544); *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment").

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

Indeed, as a court in this district recognized in a case decided after *Jennings* involving an applicant for admission who was detained under Section 1225(b)(1)(B)(ii), "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 with respect to an applicant for admission detained under Section 1225(b)(2)(A). *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 v. Davis*, 533 U.S. 678, 693 (2001) ("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 v. Plasencia*, 459 U.S. 21, 32 (1982), and therefore "stand[ ] on a different footing," *Mezei*, 345 U.S. at 212. Their lack of entitlement to a bond hearing thus flows logically from their lack of admission to the United States in the first instance. Given that the constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide, Petitioner cannot show that he has suffered a procedural due process violation.

Petitioner's detention for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *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)(1)(B)(ii) for the duration of his removal proceedings while he pursues his asylum application 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.

The Government is aware that, post-*Jennings*, other judges in this district have held that noncitizens subject to mandatory detention under Section 1225(b)(1)(B)(ii) have a constitutional right to a bond hearing if the detention is "unreasonably prolonged." *See, e.g.*, *Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) (collecting additional authorities finding the same); *Kouadio v. Decker*, 352 F. Supp. 3d 235 (S.D.N.Y. 2018); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018).

The Government respectfully disagrees with those decisions and submits that the Court should not apply the reasoning of these decisions 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 these decisions did not fully account for this fact.[5] In any event, at this juncture, Petitioner cannot plausibly claim that his detention was unreasonably prolonged, as he has been detained for less than a month.

Petitioner's due process claim should therefore be denied.[6]

[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.

[6] If the Court were to determine that Petitioner's detention is governed by 8 U.S.C. § 1226(a)—which is should not, for the reasons explained above—then the proper remedy would not be release but rather a bond hearing before an immigration judge, who would consider whether Petitioner presents a danger to the community or a flight risk. *See, e.g.*, *Perez v. Francis*, No. 25 Civ. 8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (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 pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a)").

CONCLUSION

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

Dated: New York, New York
December 3, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 4,951 words.