UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN OBDULIO QUINTEROS MORAN, Petitioner, v. WILLIAM JOYCE, Acting New York City Field Office Director, *et al.*, Respondents.	No. 25 Civ. 9645 (GBD)

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

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TABLE OF CONTENTS

Preliminary Statement 1

Legal Background 2

Factual Background 6

I. Petitioner's Immigration, Detention, and Criminal History 6

II. The Habeas Petition and Procedural Background 8

Argument 8

I. Petitioner is Lawfully Detained Pursuant to Section 1225(b)(1)(B)(ii) and Not Entitled to a Bond Hearing 8

II. Petitioner's Detention Comports with Due Process 12

Conclusion 17

TABLE OF AUTHORITIES

Cases Page(s)

Abel v. United States,
362 U.S. 217 (1960) 2

Al-Thuraya v. Warden,
2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) 15, 16

Black v. Decker,
103 F.4th 133 (2d Cir. 2024) 15

Camreta v. Greene,
563 U.S. 692 (2011) 15

Carlson v. Landon,
342 U.S. 524 (1952) 14

Comes v. DeLeon,
2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) 10

D.A.V.V. v. Warden, Irwin County Detention Center,
2020 WL 13240240 (M.D. Ga. Dec. 7 13

Demore v. Kim,
538 U.S. 510 (2003) 2, 14, 15

DHS v. Thuraissigiam,
591 U.S. 103 (2020) 4, 11

Gonzales Garcia v. Rosen,
513 F. Supp. 3d 329 (W.D.N.Y. 2021) 13

Gonzalez v. Joyce,
2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) 10

Guzman Andujar v. Ladeon Francis,
2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025) 10

Guzman Cardenas v. Almodovar,
2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) 10

Guzman v. Tippy,
130 F.3d 64 (2d Cir. 1997) 12

Hing Sum v. Holder,
602 F.3d 1092 (9th Cir. 2011) 2

Huamani v. Francis,
2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) 10

J.G.O. v. Francis,
2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) 10

Jennings v. Rodriguez,
583 U.S. 281 (2018) ..... passim

Johnson v. Guzman Chavez,
594 U.S. 523 (2021) 5

Judulang v. Holder,
565 U.S. 42 (2011) 2, 3

Landon v. Plasencia,
459 U.S. 21 (1982) 2, 14

Lopez Benitez v. Francis,
2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) 10

Martinez v. Att'y General of U.S.,
693 F.3d 408 (3d Cir. 2012) 3

Matter of Adeniji,
22 I. & N. Dec. 1102 (BIA 1999) 5

Matter of D-J-,
23 I. & N. Dec. 572 (A.G. 2003) 5

Matter of Yajure Hurtado,
29 I. & N. Dec. 216 (BIA 2025) 2, 3, 4

Mendez Ramirez v. Decker,
612 F. Supp. 3d 200 (S.D.N.Y. 2020) 13

Perez v. Francis,
2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) 17

Phillips v. Ienuso,
No. 93 Civ. 6027 (Sotomayor, J.), 1995 WL 239062 (S.D.N.Y. Apr. 24, 1995) 8

Poonjani v. Shanahan,
319 F. Supp. 3d 644 (S.D.N.Y. 2018) 13

Reno v. Flores,
507 U.S. 292 (1993) 15

Rueda Torres v. Francis,
2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) 10

Salim v. Tryon,
2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014) 13

Samb v. Joyce,
2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) 10

Savane v. Francis,
2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) 16

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953) ..... passim

Sun v. Almodovar,
2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025) 10, 17

U.S. ex rel. Knauff v. Shaughnessy,
338 U.S. 537 (1950) 11, 12, 13

U.S. ex rel. Kordic v. Esperdy,
386 F.2d 232 (2d Cir. 1967) 11

Velasco Lopez v. Decker,
978 F.3d 842 (2d Cir. 2020) 2, 14

Wong Wing v. United States,
163 U.S. 228 (1896) 15

Zadvydas v, Davis,
533 U.S. 678 (2001) 14, 16

Statutes

8 U.S.C. § 1101(a)(13) 2
8 U.S.C. § 1101(a)(13)(A) 3, 4
8 U.S.C. § 1182(d)(5)(A) 5, 8, 12, 15
8 U.S.C. § 1225 ..... 2, 9
8 U.S.C. § 1225(a)(1) 4, 9, 11
8 U.S.C. § 1225(a)(3) 4

8 U.S.C. § 1225(a)-(b) 3
8 U.S.C. § 1225(b)(1) 9
8 U.S.C. § 1225(b)(1)(B)(ii) 8
8 U.S.C. § 1225(b)(1)(A) 9
8 U.S.C. § 1225(b)(2)(A) 4, 8, 10
8 U.S.C. § 1226(a) 5, 8, 10, 17
8 U.S.C. § 1226(a)(1) 5

Regulations

8 C.F.R. § 208.30(a) 9
8 C.F.R. § 208.30(e)(5) 4
8 C.F.R. § 235.1 4
8 C.F.R. § 235.3(b)(4) 9
8 C.F.R. § 1003.1(e)(8) 7
8 C.F.R. § 1003.19(d) 5
8 C.F.R. § 212.5 5
8 C.F.R. § 212.5(b) 12

Other Authorities

Pub. L. No. 104-208 3
Pub. L. No. 107-296 5

Respondents (the "Government") respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 5 (the "Petition" or "Pet."), filed on behalf of petitioner Marvin Obdulio Quinteros Moran ("Petitioner").

PRELIMINARY STATEMENT

Petitioner is a Guatemalan national with an extensive criminal history who has been ordered removed from the United States and is awaiting the outcome of his appeal of that order. In July 2013, he was apprehended by United States Customs and Border Protection ("CBP") in Arizona 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 Guatemala, 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. In the meantime, Petitioner was released on bond, after which he was arrested by the New York Police Department ("NYPD") ten times. In July 2024, the Immigration Judge ordered that Petitioner be removed, and Petitioner appealed that order to the Board of Immigration Appeals ("BIA") shortly thereafter. On August 5, 2025, after the NYPD arrested Petitioner for the tenth time (for criminal contempt in the first degree), DHS lodged a detainer against Petitioner with NYPD. On November 16, 2025, U.S. Immigration and Customs Enforcement ("ICE") took Petitioner into custody during a targeted enforcement action, and subsequently transferred him to a detention facility in Virginia, where he remains pending resolution of his removal proceedings.

On November 19, 2025, counsel for Petitioner filed the Petition on his behalf. In the Petition, Petitioner asserts that his detention violates the Immigration and Nationality Act ("INA") and his Fifth Amendment due process rights. The Petition should be denied. Because Petitioner is

detained under 8 U.S.C. § 1225(b)(1)(B)(ii) as an alien who has passed the credible-fear screening, he is subject to mandatory detention and potential release only on discretionary parole. Accordingly, the Court should deny the Petition.

LEGAL BACKGROUND

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

Prior to 1996, the INA treated aliens differently based on whether the alien had *physically* "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45-46 (2011) ("Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an 'exclusion proceeding' and an alien already here channeled to a 'deportation proceeding.'") (citing *Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982)). "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 General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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). In addition to applying to aliens seeking admission who cannot demonstrate that they are "clearly and beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), section 1225(b) also applies to aliens, like Petitioner, who either arrive at a port of entry without valid documentation or are apprehended shortly after unlawfully crossing the border, but who pass the credible-fear screening process and are placed in removal proceedings to pursue an asylum application, *see* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(e)(5). Aliens in both categories "shall be detained" during the proceedings to determine whether they will be admitted or instead ordered removed. 8 U.S.C. §§ 1225(b)(1)(B)(ii) and (2)(A). Any alien detained under either provision nonetheless may request that the Secretary parole him into the United States "on a case-by-case basis for urgent

humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. §§ 212.5, 235.3(c). Like release on bond, release on parole can allow the alien to live inside the United States during the pendency of his immigration proceedings. 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 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); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

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[1] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and 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).

FACTUAL BACKGROUND

I. Petitioner's Immigration, Detention, and Criminal History

CBP encountered Petitioner in or near Nogales, Arizona, on July 4, 2013, 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.") ¶¶ 5-6; Ex. 1.[2] CBP determined Petitioner was inadmissible to the United States and issued him an expedited removal order. So Decl. ¶ 6; Ex. 3. After Petitioner claimed a fear of return to Guatemala, he was referred to an asylum officer for a credible fear determination. So Decl. ¶ 6; *see also* 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)). At that interview on July 17, 2023, an asylum officer determined that Petitioner had a credible fear, which allowed him to be placed into removal proceedings to pursue an asylum application. So Decl. ¶ 7. On July 23, 2013, CBP served Petitioner with a Notice to Appear ("NTA"), the document used to commence removal proceedings, charging him as inadmissible under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien present in the United States with no valid entry documents. *Id.* ¶ 8; Ex. 4. On July 29, 2013, DHS released Petitioner on a $3,000 cash bond. So Decl. ¶ 10; Ex. 3.

DHS commenced removal proceedings against Petitioner by serving the NTA on served the NTA on the Executive Office for Immigration Review. So Decl. ¶ 9. On April 25, 2017, Petitioner appeared before an Immigration Judge with counsel, at which time Petitioner admitted to all the allegations on the NTA, conceded removability, and filed several applications for relief from removal with the Immigration Court. *Id.* ¶ 13. After several adjournments, *see id.* ¶¶ 14, 20,

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

22, on March 20, 2024, the Immigration Judge conducted a merits hearing on Petitioner's case, *id.* ¶ 23. On July 29, 2024, the Immigration Judge issued a written decision denying Petitioner's applications for relief and ordered him removed to Guatemala. *Id.* ¶ 26. On August 28, 2024, Petitioner filed an appeal of the removal order to the BIA, which is currently pending. *Id.* ¶ 27.[3]

In the last few years, NYPD has arrested Petitioner ten times—four times in 2022, *id.* ¶¶ 15-18; twice in 2023, *id.* ¶¶ 19, 21; three times in 2024, *id.* ¶¶ 25, 28-29; and once in 2025, *id.* ¶ 30; *see* Ex. 10. In several of these cases the matter was dismissed and sealed, So Decl. ¶¶ 15-18; Ex. 9, or the case disposition is sealed or unknown, So Decl. ¶¶ 19, 21, 30. However, Petitioner pleaded guilty to disorderly conduct on August 12, 2024, *id.* ¶ 25, and again on November 6, 2024, *id.* ¶ 28, and to misdemeanor assault on January 17, 2025, *id.* ¶ 29; *see* Ex. 10.

Following Petitioner's most recent arrest by NYPD on August 5, 2025, Petitioner was identified by ICE's Enforcement and Removal Operations' Criminal Alien Program due to his criminal arrest on that date. So Decl. ¶ 30; Ex. 5. ICE lodged a detainer against Petitioner with NYPD, which was subsequently declined by NYPD. So Decl. ¶ 30; Ex. 6. On November 16, 2025, agents and officers with Homeland Security Investigations, the Federal Bureau of Investigation, Border, Patrol, and CBP engaged in a targeted operation to apprehend Petitioner and conducted surveillance operations in Queens, New York. *Id.* ¶ 31. While conducting surveillance, agents and officers encountered Petitioner who identified himself and was taken into custody and transported to ICE processing at 26 Federal Plaza. *Id.* ¶ 31; *see* Ex. 7. On November 20, 2025, ICE transferred Petitioner to the Farmville Detention Center in Farmville, Virginia, due to bed space

[3] When he filed the appeal, he was not detained. After Petitioner was re-detained by ICE, ICE filed a motion to expedite the briefing schedule with the BIA. So Decl. ¶ 27. The BIA is required to decide appeals as soon as practicable, with a priority given to cases involving detained aliens. *See* 8 C.F.R. § 1003.1(e)(8).

limitations, where he is currently detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) pending the conclusion of his removal proceedings. So Decl. ¶ 32.

II. The Habeas Petition and Procedural Background

On November 19, 2025, Petitioner filed his Petition. ECF No. 1 (re-filed as ECF No. 5). On November 24, 2025, the Court ordered the Government to respond by December 2, 2025, and set a date for a conference. ECF No. 6.

In the Petition, Petitioner (incorrectly) asserts that his re-detention under 8 U.S.C. § 1225(b)(2)(A) violates the INA because he was "previously detained pursuant to 8 U.S.C. § 1226(a)" before being released on bond and he may not be re-detained under 8 U.S.C. § 1225(b)(2)(A) without a bond hearing. Pet. ¶¶ 3-4, 30-37, 42-43. He also asserts that his detention violates his due process rights under the Fifth Amendment.[4] Pet. ¶¶ 6, 38, 45-48. As ultimate relief, Petitioner principally requests that the Court order the Government to release him from custody "without conditions of supervision or alternatives to detention" or conduct 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, 24-37, 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

[4] Petitioner also argues that the conditions of his confinement at 26 Federal Plaza violate his due process rights. Pet. ¶ 7. This claim is moot as Petitioner was moved to a long-term detention facility on November 20, 2025. So Decl. ¶ 32; *see, e.g.*, *Phillips v. Ienuso*, No. 93 Civ. 6027 (Sotomayor, J.), 1995 WL 239062, at *1 (S.D.N.Y. Apr. 24, 1995) ("This Circuit has long and consistently held that a plaintiff's request for declaratory or injunctive relief relating to a correctional facility is moot once plaintiff is transferred or released from the facility." (citing cases)).

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); *see Jennings*, 583 U.S. at 297.

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,[5] 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). 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 and it mandates detention. *Jennings*, 583 U.S.

[5] 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)).

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. ¶¶ 4-5. But this is based on two mistaken beliefs: first, that Petitioner was detained and then released by CBP in 2013 "pursuant to 8 U.S.C. § 1226(a)," Pet. ¶ 3; and second, that Petitioner is currently being detained pursuant to 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, this is not the typical case Section 1225 versus Section 1226 case that a number of judges in this district have addressed recently.[6] 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).

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[6] *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).

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). Declaration of Jennifer Jude ("Jude Decl.") Ex. A at 45.[7]

Petitioner was detained shortly after he unlawfully crossed the border in July 2013, and he was served with an expedited removal order. So Decl. ¶¶ 5-6. Petitioner would have been removed "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,'" *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 bond after his arrest, his status as an applicant for admission has remained unchanged. *Cf. 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."). Petitioner's release was revoked on November 16, 2025, when ICE again arrested him.

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.*

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[7] 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." Jude Decl. Ex. A at 51. That holding is no longer good law after *Jennings*. *See Jennings*, 583 U.S. at 300.

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*, 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.[8]

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

[8] The Government also notes that Petitioner's extensive criminal history since first arriving in the United States, including his most recent August 5, 2025 arrest by NYPD, which led DHS to re-detain him, So Decl. ¶¶ 30-31, constitutes changed circumstances reasonably justifying his re-detention.

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)(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 another judge in this district has held that noncitizens subject to mandatory detention under Section 1225(b)(2)(A) have a constitutional right to a bond hearing under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), even though *Black* itself involved individuals detained under Section 1226(c). *See Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully 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.[9] 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.[10]

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[9] This Court's recent opinion in *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), ECF No. 15 (June 18, 2025), is inapposite as it concerned the amount of process due before detention of a non-citizen under Section 1226(a) and not an applicant for admission under Section 1225(b)(1)(B)(ii) like Petitioner. It is also distinguishable because in *Valdez*, the Court noted that there were no changed circumstances between the petitioner's initial release by CBP and subsequent arrest by ICE justifying re-detention. Here, Petitioner has been arrested by NYPD ten time since he was released by CBP, and the most recent arrest earlier this year led ICE to take steps to re-detain him. So Decl. ¶¶ 30-31.

[10] 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.

Petitioner's due process claim should therefore be denied.[11]

CONCLUSION

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

Dated: New York, New York
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[11] 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)").

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section III.D of 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 and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 5,761 words.