UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| M.K.,<br><br>Petitioner,<br><br>v.<br><br>PAUL ARTETA, *et al.*,<br><br>Respondents. | No. 25 Civ. 9918 (LAK) |

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

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## TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... 5

FACTUAL BACKGROUND ..... 6

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

II. Petitioner's Removal Proceedings ..... 7

III. The Habeas Petition and Procedural Background ..... 9

LEGAL BACKGROUND ..... 9

ARGUMENT ..... 11

IV. Petitioner Is Lawfully Detained Pursuant to Section 1225(b)(1)(B)(ii) and Not Entitled to a Bond Hearing ..... 11

V. Petitioner's Detention Comports with Due Process ..... 15

VI. DHS Has Not Violated the Rehabilitation Act ..... 20

CONCLUSION ..... 22

## TABLE OF AUTHORITIES

**Cases**

*Al-Thuraya v. Warden*,
2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) ..... 13, 14

*Camreta v. Greene*,
563 U.S. 692 (2011) ..... 14

*Carlson v. Landon*,
342 U.S. 524 (1952) ..... 13

*D.A.V.V. v. Irwin Cnty. Det. Ctr.*,
2020 WL 13240240 (M.D. Ga. Dec. 7, 2020) ..... 13

*Demore v. Hyung Joon Kim*,
538 U.S. 510 (2003) ..... 13

*Dep't of Homeland Sec. v. Thuraissigiam*,
591 U.S. 103 (2020) ..... 11

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

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

*Jennings v. Rodriguez*,
583 U.S. 281 (2018) ..... 10, 12, 13

*Kouadio v. Decker*,
352 F. Supp. 3d 235 (S.D.N.Y. 2018) ..... 13

*Landon v. Plasencia*,
459 U.S. 21 (1982) ..... 13

*Lopez v. Decker*,
978 F.3d 842 (2d Cir. 2020) ..... 13

*Matter of M-S-* ,
27 I&N Dec. 509 (A.G. 2019) ..... 8

*McElwee v. Cnty. of Orange*,
700 F.3d 635 (2d Cir. 2012) ..... 15

*Montalvo v. Lamy*,
139 F. Supp. 3d 597 (W.D.N.Y. 2015) ..... 15

*Perez v. Decker*,
2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018) ..... 13

*Perez v. Francis*,
2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) ..... 14

*Poonjani v. Shanahan*,
319 F. Supp. 3d 644 (S.D.N.Y. 2018) ..... 12

*Ramirez v. Decker*,
612 F. Supp. 3d 200 (S.D.N.Y. 2020) ..... 12

*Reno v. Flores*,
507 U.S. 292 (1993) ..... 13

*Salim v. Tryon*,
2014 WL 1664413 (W.D.N.Y. Jan. 22, 2014) ..... 13

*Savane v. Francis*,
2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) ..... 14

*Schnauder v. Gibens*,
679 F. App'x 8 (2d Cir. 2017) ..... 15

*Shaughnessy v. United States ex rel. Mezei*,
345 U.S. 206 (1953) ..... 12, 13, 14

*Sun v. Almodovar*,
2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025) ..... 14

*United States ex rel. Knauff v. Shaughnessy*,
338 U.S. 537 (1950) ..... 12

*United States ex rel. Kordic v. Esperdy*,
386 F.2d 232 (2d Cir. 1967) ..... 11

*Wong Wing v. United States*,
163 U.S. 228 (1896) ..... 13

*Zadvydas v. Davis*,
533 U.S. 678 (2001) ..... 13, 14

**Statutes**

8 U.S.C. § 1 ..... 7
8 U.S.C. § 3 ..... 7
8 U.S.C. § 212 ..... 8
8 U.S.C. § 240 ..... 9
8 U.S.C. § 297 ..... 10
8 U.S.C. § 302 ..... 10
8 U.S.C. § 705 ..... 15
8 U.S.C. § 1158 ..... 9
8 U.S.C. § 1182 ..... 8, 9, 10, 11, 12, 13, 14
8 U.S.C. § 1225 ..... 8, 9, 10, 11, 12, 13, 14
8 U.S.C. § 1226 ..... 9, 10, 11, 14

8 U.S.C. § 1229a ..... 9
8 C.F.R. § 208.30 ..... 9, 10
8 C.F.R. § 212.5 -235.3(c) ..... 9, 10, 12
8 C.F.R. § 1003.42 -1208.30(g)(2)(iv)(B) ..... 8
29 U.S.C. § 794 ..... 15

Respondents (the "Government") respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, Dkt. No. 1 (the "Petition" or "Pet."), filed on behalf of petitioner M.K.[1] ("Petitioner").

## PRELIMINARY STATEMENT

Petitioner is an Uzbekistani national who was apprehended by United States Customs and Border Protection ("CBP") in December 2021 near the Calexico, California border, after he unlawfully crossed 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 Uzbekistan, and under the statutory process in place for aliens with such claims (set forth in 8 U.S.C. § 1225), he was given a credible fear interview ("CFI") by an asylum officer. Thereafter, the asylum officer made a negative screening determination and a removal order was issued. Petitioner appealed the negative credible fear finding by the asylum officer to an Immigration Judge and, on June 28, 2022, an Immigration Judge vacated the removal order and ordered the case returned to the Department of Homeland Security ("DHS") for further proceedings. 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 DHS, and its component, U.S.

[1] On December 3, 2025, the Court granted Petitioner's motion to proceed under a pseudonym. *See* Dkt. Nos. 3, 12.

Immigration and Customs Enforcement ("ICE"). Because ICE is not exercising that parole discretion here, Petitioner's detention is mandatory.

In his Petition, Petitioner asserts that his detention violates the Immigration and Nationality Act ("INA"), his Fifth Amendment due process rights, and violates the Rehabilitation Act of 1974. 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)(1) and that Matter of M-S-, a case directly foreclosing Petitioner's arguments, is inapplicable. However, Petitioner advances no cogent arguments as to why detention under Section 1225(b)(1)(B)(ii) is improper. Thus, the Court should deny the Petition.

## FACTUAL BACKGROUND

### I. Petitioner's Immigration and Detention History

CBP encountered M.K. at or near the Calexico, California, border on December 26, 2021, and a CBP Agent determined that he had unlawfully entered the United States on or around the same date. *See* Ex. 1 at 2.[2] CBP determined Petitioner was inadmissible to the United States and processed him for expedited removal. *Id.* at 3. During this encounter with CBP, Petitioner made a claim of fear of return to Uzbekistan. *Id.* at 1. On or about February 22, 2022, Petitioner was provided a CFI by an asylum officer, at which point the asylum officer determined that Petitioner had not established a credible fear of persecution in his country. *See* Ex. 2. In light of the negative credible fear finding by the asylum officer, on or about that same date, Petitioner was issued a Form I-860 Notice and Order of Expedited Removal. *See* Ex. 3. Petitioner exercised his right to appeal the negative credible fear finding by the asylum officer, and requested review by an

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

Immigration Judge. *See* Ex. 2. On or about March 3, 2022, while Petitioner appealed the negative credible fear finding to an Immigration Judge, ICE, exercising its discretionary authority, issued Petitioner a Form I-220A Order of Release on Recognizance, releasing Petitioner from custody so long as he abided by certain conditions.[3] *See* Ex. 4. On or about June 28, 2022, an Immigration Judge reviewed Petitioner's CFI and ordered that Petitioner's expedited removal order be vacated and "the case is returned to DHS for further proceedings" pursuant to 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(B). *See* Ex. 5 at 1.

As per his reporting requirement to ICE, on or about July 10, 2024, Petitioner appeared at the ICE New York Field Office. *See* Ex. 6. At that time, ICE reviewed Petitioner's records, noted that Petitioner had recently been criminally arrested on several occasions, and administratively arrested Petitioner pursuant to a Form I-200 Warrant for Arrest of Alien. *See* Ex. 6 at 2; *see also* Ex. 7. On or about July 16, 2024, an asylum officer issued, and Petitioner was personally served 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. *See* Ex. 8.

## II. Petitioner's Removal Proceedings

On or about September 3, 2024, Petitioner filed a Form I-589, Application for Asylum, with the immigration court, indicating he was seeking asylum, withholding of removal under the

[3] Importantly, these conditions included, *inter alia*, that Petitioner: surrender for removal from the United States if so ordered, report to ICE as directed by the Duty Officer, and Petitioner must not violate any local, State, or Federal laws or ordinances while on release. *See* Ex. 4 at 1.

INA, and protection under the Convention Against Torture ("CAT"). *See* Pet. ¶ 30. While Petitioner's removal proceedings were ongoing, due to competency concerns, the Immigration Judge held a competency hearing pursuant to *Matter of M-A-M-*. *See* Pet. ¶ 35. Following the competency hearing, the Court found that Petitioner's removal proceedings could be held, but ordered that any hearing on Petitioner's applications for relief proceed with certain procedural safeguards. *Id.*

In the interim, Petitioner filed a motion for custody redetermination, *i.e.*, a bond hearing, in his immigration proceedings, and on February 13, 2025, the Immigration Judge issued a "short decision" denying Petitioner a bond hearing, finding that Petitioner was subject to mandatory detention pursuant to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *See* Ex. 9. On March 12, 2025, the Immigration Judge issued a comprehensive written decision setting forth why Petitioner was ineligible for a bond hearing and mandatory detention was required pursuant to *Matter of M-S-*. *See* Ex. 10. Thereafter, Petitioner appealed the denial of bond to the Board of Immigration Appeals (the "BIA"), raising the same exact arguments before the BIA as the Petitioner brings in the instant Petition. *See* Pet. ¶ 40. The BIA conclusively rejected each argument raised by Petitioner, finding that Petitioner's detention falls squarely within *Matter of M-S-* and Petitioner is subject to mandatory detention under Section 1225(b)(1)(B)(ii). *See* Ex. 11.

On or about April 11, 2025, the Immigration Judge issued a written decision denying all of Petitioner's applications for relief and ordered Petitioner removed from the United States to Uzbekistan. *See* Pet. ¶ 42. Petitioner appealed the Immigration Judge's order, and that appeal is currently pending before the BIA. *Id.* Petitioner remains detained pending a decision on his appeal to the BIA.

## III. The Habeas Petition and Procedural Background

On November 26, 2025, Petitioner filed his Petition. Dkt. No. 1. On December 4, 2025, the Court ordered the Government to respond by December 16, 2025, and for Petitioner to submit a Reply brief, if any, by December 22, 2025.[4]

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)(1), and is eligible for a bond hearing under 8 U.S.C. § 1226(a) and its implementing regulations. Pet. ¶¶ 78-82. He also asserts that his detention violates his due process rights under the Fifth Amendment. Pet. ¶¶ 87-88. Lastly, Petitioner asserts his detention violates the Rehabilitation Act of 1974. Pet. ¶¶ 90-96. As ultimate relief, Petitioner principally requests that the Court order the government to release him from custody or provide him with a bond hearing, and declare that Petitioner's detention is unlawful. *Id.*, Prayer for Relief.

## 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

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[4] On December 9, 2025, a member of the Court's staff contacted the parties stating to "keep January 7, 2026, available for the potential scheduling of a hearing that day." To conserve judicial resources, the Government submits that a hearing is not necessary given that this is a purely legal issue—which the Government believes is squarely foreclosed by *Matter of M-S-* — and that the Court can decide this matter on the briefing submitted herein. However, Should the Court prefer to hold the hearing, the government will, of course, be happy to appear.

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. § 1229a. *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." *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (§ 1225(b)(1) "mandate[s] detention of aliens throughout the completion of applicable proceedings"). 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).

## 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. ¶ 80, 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). *See Matter of M-S-*, 27 I&N at 515-19. Petitioner is an alien who arrived at the border without valid documentation, was subjected to the expedited removal process, claimed a fear of return to his home country, was referred to an asylum officer for an interview, and after immigration-judge review, passed the credible-fear screening, permitting him to be 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 an Immigration Judge reviewed Petitioner's negative credible fear finding by the asylum officer and vacated the removal order and ordered DHS refer Petitioner to removal

proceedings,[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). *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. ¶ 80.[6] But this is based on the mistaken belief that Petitioner's detention is governed by 8 U.S.C. § 1226 because Petitioner was "not

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[5] If the Immigration Judge had agreed with the asylum officer's determination 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)).

[6] Petitioner does not appear to raise a claim that his detention is governed by 8 U.S.C. § 1225(b)(2)(A) following the recent decision in *Matter of Yajure Hurtado*, which this Court, and a number of judges in this District, have recently considered. *See Barco Mercado v. Francis, et al.*, No. 25 Civ. 6582 (LAK), Dkt. 28 (S.D.N.Y. Nov. 26, 2025); *Hurtado v. Genalo, et al.*, No. 25 Civ. 9172 (LAK), Dkt. 14 (S.D.N.Y. Dec. 2, 2025); *Shi v. Almodovar, et al.*, No 25 Civ. 9905 (LAK), Dkt. 10 (S.D.N.Y. Dec. 10, 2025). The government submits that those cases, and the issues raised in those habeas petitions, are irrelevant since Petitioner's detention is governed by Section 1225(b)(1)(B)(ii).

'transferred' to full removal proceedings." *Id.* This claim is contrary to both law and the facts of this case. As mentioned *supra*, following a negative credible fear finding by the asylum officer, Petitioner appealed to an Immigration Judge who, after reviewing the CFI, determined that Petitioner established a credible fear, vacated DHS's removal order, and returned the case "to DHS for further proceedings." Ex. 5. Notwithstanding that it took DHS until July 16, 2024 to issue an NTA (Ex. 8), this does not mean, as Petitioner indicates, that he was not transferred to removal proceedings. Petitioner points to no authority to support this proposition that, in order to be "transferred" to full removal proceedings, DHS must do so within a proscribed time period.

Instead, Petitioner attempts to side-step this glaring issue with their argument by speculating that, "Respondents have consistently treated [Petitioner] as subject to 8 U.S.C. § 1226," when they released him from detention, therefore, he was either detained under Section 1226 or provided humanitarian parole under Section 1182(d)(5). Pet. ¶ 81. However, Petitioner's presence in the United States after the Immigration Judge vacated the expedited removal order and Petitioner was placed into removal proceedings to pursue an asylum application cannot shift the statutory authority for his detention from Section 1225(b)(1)(B)(ii) to Section 1226(a). The BIA squarely rejected this argument by Petitioner when he appealed the Immigration Judge's decision finding him subject to mandatory detention:

> Further, DHS' transfer of the respondent to full removal proceedings did not, and could not, alter or convert the authority governing his detention from mandatory detention under INA § 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV) to discretionary under INA § 236(a), 8 U.S.C. § 1226(a) (IJ at 1-3). *See Matter of M-S-*, 27 I&N Dec. at 515-19 (holding that aliens who start in expedited proceedings and are transferred to full proceedings based on their establishment of a credible fear of persecution or torture remain detained under the authority of INA § 235(b), 8 U.S.C. § 1225(b), which is mandatory, and thus they are statutorily ineligible for release on a discretionary bond under INA § 236(a), 8 U.S.C. § 1226(a)); *see also Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018)

> ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin).

*See* Ex. 11 at 4.

Petitioner was detained shortly after he unlawfully crossed the border in December 2021, and he was processed for expedited removal. Ex. 1. 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,'" *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 conditional 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."). Contrary to Petitioner's speculation that he must have been released on humanitarian parole (Pet. ¶ 81), this is incorrect.

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). However, 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.[7] *See Liang v. Almodovar*, No. 25 Civ. 9322 (MKV), ECF No. 12 (Opinion) at 10-11 (S.D.N.Y. Dec. 15, 2025) (questioning the reasoning of *Al-Thuraya*).

While the Government recognizes that Petitioner has been detained since July 2024, he has been afforded due process under the law. In short, Petitioner was provided an opportunity to pursue applications of relief to remain in the United States, and all of his applications were denied. Although the Petitioner has appealed the decision to the BIA, the BIA has not made a ruling since the appeal was fully briefed in July 2025. Notwithstanding this delay, Petitioner is lawfully

[7] 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.

detained and his only avenue for release is if DHS grants him humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Petitioner's due process claim should therefore be denied.[8]

## III. DHS Has Not Violated the Rehabilitation Act

Petitioner also claims that his detention violates the Rehabilitation Act of 1974 and needs "reasonable accommodation to ensure that [Petitioner] can meaningfully access his immigration proceedings." Pet. ¶ 96. Petitioner brings this guise as a last-ditch effort to persuade the Court to release him even though he is subject to mandatory detention. Petitioner is wrong.

The Rehabilitation Act provides that, "[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). To assert a claim under this Section, "a plaintiff must demonstrate that (1) he is a qualified individual with a disability; (2) the defendant is subject to one of the Acts; and (3) he was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities, or was otherwise discriminated against by the defendant because of his disability." *See McElwee v. Cnty. of Orange*, 700 F.3d 635, 640 (2d Cir. 2012) (citation omitted).

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[8] 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)").

While the Government is not in a position to dispute the first two elements, Petitioner's claim fails in that he has failed to show how he was denied the opportunity to participate in or benefit from the Respondents' services, programs, or activities or was otherwise discriminated against by the defendants because of his disability. Indeed, Petitioner has been afforded access to immigration court, his immigration attorney, his immigration attorney's retained mental health professionals (*See* Pet. Exs. A-D), and medical care at Orange County Jail.[9] Indeed, while Petitioner's baseless claim that he has been denied "meaningful access [to] his immigration proceedings" (Pet. ¶ 96), the record and the Petition's own exhibits demonstrate the exact opposite. Importantly, while the Government does not dispute that his retained medical consultant diagnosed Petitioner with an unspecified post-traumatic stress disorder and long-term memory issues, Petitioner has failed to show how any of these purported issues correlate to his current detention whatsoever. Accordingly, this claim should be dismissed as meritless. *See Schnauder v. Gibens*, 679 F. App'x 8, 11 (2d Cir. 2017) (affirming dismissal of Rehabilitation Act claim where plaintiff had "not pleaded facts showing that denial of treatment was attributable to bias based on disability," so "his pleadings [did] not admit an inference of proscribed discrimination"); *Montalvo v. Lamy*, 139 F. Supp. 3d 597, 611 (W.D.N.Y. 2015) (dismissing Rehabilitation Act claim for failure to state a claim where plaintiff did not "allege facts plausibly supporting the inference that he was excluded on the basis of disability").

[9] On or about November 20, 2024, prior to Petitioner's competency hearing in immigration court, DHS filed approximately 50 pages of medical documents pertaining to the Petitioner's care at Orange County Jail, which were then considered by the Immigration Judge when holding a competency hearing pursuant to *Matter of M-A-M-*.

## CONCLUSION

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

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December 16, 2025

Respectfully submitted,
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