UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

YUNIS G. LIRA CACERES

Plaintiff,

- against -

CHRISTOPHER SHANAHAN, New York Field Office Director, U.S. Immigration and Customs Enforcement,

Respondent.

----------X

Civil Action No. 26-cv-0016

(Merchant, J.)

MEMORANDUM OF LAW IN RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT BE ISSUED

JOSEPH NOCELLA, JR.
United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201

Kimberly A. Francis
Assistant U.S. Attorney
(Of Counsel)

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 1

I. Statutory And Regulatory Framework 1

A. Before 1996, Aliens Who Unlawfully Crossed the Border Had More Rights And Protections Than Aliens Who Presented at A Port Of Entry 2

B. Congress Eliminates Preferential Treatment for Aliens Who Unlawfully Entered And Mandates Detention of All "Applicants for Admission" 3

C. Relevant Statutory Authority as to Unaccompanied Alien Children 6

1. The Homeland Security Act of 2002 6

2. Trafficking Victims Protection Reauthorization Act of 2008 6

II. Petitioner's Relevant Immigration And Detention History 7

A. Petitioner Unlawfully Crosses The Southern Border, Is Detained By CBP, And Is Transferred to ORR Custody Before Being Released to a Sponsor 7

B. Petitioner, Now an Adult, Is Detained and Placed in Removal Proceedings 8

III. This Action 8

ARGUMENT 9

I. Petitioner's Detention Is Lawful 9

A. Petitioner Is Lawfully Detained Under Section 1225(b)(2)(A) 9

1. The Text of Section 1225(b)(2)(A) Shows That It Applies Here 9

2. Authority From The Supreme Court, Other Courts, And The BIA Confirm That Petitioner Is Covered By Section 1225(b)(2) 11

3. Petitioner's Detention Comports with Due Process 13

B. The Government Respectfully Disagrees with Prior Decisions Concluding that Aliens Like Petitioner Are Covered by Section 1226 17

II. Neither Petitioner's Pending SIJ Petition, the TVPRA, nor the Flores Settlement Forecloses Detention 23

CONCLUSION..... 25

TABLE OF AUTHORITIES

Cases

Abdel v. United States, 362 U.S. 217 (1960) 1

Ahmed v. Holder, 624 F.3d 150 (2d Cir. 2010) 22

Alonzo v. Noem, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) 12, 20

Artiga v. Genalo, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) ..... *passim*

Att'y Gen. of United States v. Wynn, 104 F.4th 348 (D.C. Cir. 2024) 9

Avramenkov v. INS, 99 F. Supp. 2d 210 (D. Conn. 2000) 17

Benito Vasquez v. Moniz, No. 25-cv-11737, 2025 WL 1737216 (D. Ma. June 23, 2025) 24

Calderon Lopez v. Lyons, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) 12

Candido v. Bondi, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) 12

Carlson v. Landon, 342 U.S. 524 (1952) 17

Chen v. Almodovar, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) ..... *passim*

City of New York v. Shalala, 34 F.3d 1161 (2d Cir. 1994) 22

Coppola v. United States, 938 F. Supp. 204 (S.D.N.Y. 1996) 22

Coronado v. Sec'y, DHS, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) 12

Cruz Rodriguez v. Olson, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025) 12

Cruz v. Noem, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) 12

Cty. of Sacramento v. Lewis, 523 U.S. 833 (1998) 16

D.A.V.V. v. Warden, Irwin County Detention Center, No. 20-cv-159, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020) 16

Da Cunha v. Freden, 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025) 12

Demore v. Kim, 538 U.S. 510 (2003) 1, 16, 17

DHS v. Thuraissigiam, 591 U.S. 103 (2020) ..... *passim*

Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016) 22

Garcia v. U.S. Attn'y Gen., 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) 12

Garibay-Robledo v. Noem, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) 12

Goe v. Zucker, 43 F.4th 19 (2d Cir. 2022) 16

Gonzales Garcia v. Rosen, 513 F. Supp. 3d 329 (W.D.N.Y. 2021) 16

Good Samaritan Hosp. v. Shalala, 508 U.S. 402 (1993) 22

United States v. Granados-Alvarado, 350 F. Supp. 3d 355 (D. Md. 2018) 24

Guerrero v. Noem, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025) 20

Guerrier v. Garland, 18 F.4th 304 (9th Cir. 2021) 15

Gutierrez Sosa v. Holt, 2026 WL 36344 (W.D. Okl. Jan. 6, 2026) 12

Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc., 467 U.S. 51 (1984) 22

Hing Sum v. Holder, 602 F.3d 1092 (9th Cir. 2010) 2, 18

Hyppolite v. Noem, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) 20, 21

J.U. v. Maldonado, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) ..... *passim*

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

Jimenez v. Thompson, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) 12

Kaplan v. Tod, 267 U.S. 228 (1925) 15

Kleber v. CareFusion Corp., 914 F.3d 480 (7th Cir. 2019) 10, 19

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

Liang v. Almodovar, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) 12

Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 591 U.S. 657 (2020) 11

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) 13, 22

Lora v. Shanahan, 804 F.3d 601 (2d Cir. 2015) 24

Martinez v. Att'y General of U.S., 693 F.3d 408 (3d Cir. 2012) 2

Mathews v. Eldridge, 424 U.S. 319 (1976) 13

Matter of Lemus-Losa, 25 I & N. Dec. 734 (BIA 2012) 10, 11

Mejia Olalde v. Noem, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 10, 12, 23

Melgar v. Bondi, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) 12

Mendez Ramirez v. Decker, 612 F. Supp. 3d. 200 (S.D.N.Y. 2020) 15, 25

Montoya v. Holt, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) 12, 20, 22

O.F.B. v. Maldonado, --- F. Supp. 3d. ---, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) 20

Oliveira v. Patterson, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) 12

Ortega-Cervantes v. Gonzalez, 501 F.3d 1111 (9th Cir. 2007) 17

P.B. v. Bergami, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) 12

Parra v. Secretary, Department of Homeland Security, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026) 14

Penaranda Arevalo v. Bondi, 130 F.4th 325 (2d Cir. 2025) 13

Poonjani v. Shanahan, 319 F. Supp. 3d 644 (S.D.N.Y. 2018) 15, 16

Rafeedie v. INS, 880 F.2d 506 (D.C. Cir. 1989) 17

Rivera Hernandez v. Noem, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) 12

Rodriguez v. Jeffreys, 2025 WL 3754411 (D. Neb. Dec. 29, 2025) 12

Rodriguez v. Noem, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) 12

Rodriguez-Acurio v. Almodovar, --- F. Supp. 3d ---, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) 20

Rodriguez-Figueroa v. Barr, 442 F. Supp. 3d 549 (W.D.N.Y. 2020) 22

Rojas-Hayes v. INS, 235 F.3d 115 (2d Cir. 2000) 21, 22

Salim v. Tryon, No. 13-cv-6659, 2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014) 15

Sandoval v. Acuna, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) 12

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

Suarez v. Noem, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) 12

Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc., 576 U.S. 519 (2015) 9, 19

Topal v. Bondi, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) 12

Torres v. Barr, 976 F.3d 918 (9th Cir. 2020) (en banc) 3, 18

United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537 (1950) 14

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020) 1, 16

Velez v. Levy, 401 F.3d 75 (2d Cir. 2005) 16

Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958 (11th Cir. 2016) 9, 10, 19

Weinstein v. Albright, 261 F.3d 127 (2d. Cir. 2001) 13

Ye v. Maldonado, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) 20

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

Zuniga v. Lyons, -- F. Supp. --, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) 12

Statutes

6 U.S.C. § 279 6

8 U.S.C. § 1101(a)(13) 2, 3, 5, 10

8 U.S.C. § 1182 ..... *passim*

8 U.S.C. § 1225 ..... *passim*

8 U.S.C. § 1226 ..... *passim*

8 U.S.C. § 1229a 4, 23

8 U.S.C. § 1231(a)(1)(B) (1995) 2

8 U.S.C. § 1232 ..... 6, 7

8 U.S.C. § 1252(a)(1) (1995) 2

Regulations

8 C.F.R. § 1.2 5

8 C.F.R. § 1003.19 18

8 C.F.R. § 1236.1(d)(1) 18

8 C.F.R. § 235.3 ..... 4, 5

8 C.F.R. § 236 18

Respondent respectfully submits this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petitioner" or "Pet."), and in response to this Court's Order to Show Cause, ECF No. 7, and January 8, 2026 Order.

PRELIMINARY STATEMENT

In 1996, Congress reformed the immigration laws so that an alien who entered unlawfully and was detained could no longer seek release from detention through a bond hearing. Instead, Congress required that he remain detained until a determination on his removal, unless the Government exercised its discretion to parole him. Petitioner Yunis G. Lira Caceres entered unlawfully and is now detained pursuant to such mandatory detention authority (8 U.S.C. § 1225(b)(2)(A)). Nonetheless, he argues his detention is unlawful and seeks release via a writ of habeas corpus. As set forth below, granting the writ would be contrary to Congress's commands; Respondent respectfully submits that the Petition should be denied.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY FRAMEWORK

For more than a century, Congress has authorized immigration officials to arrest and detain certain aliens subject to removal until their removal proceedings conclude with admission or removal. *See Abdel v. United States*, 362 U.S. 217, 233-34 (1960). Over time, the aliens those laws cover, the scope of the authority to detain, and the avenues for release an alien may pursue have evolved. Throughout, it has remained true that "[d]etention 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)). As the Supreme Court affirmed in 2003, "deportation proceedings would be vain if those accused could not be held in custody pending the inquiry[.]" *Demore*, 538 U.S. at 523 (citation omitted).

A. Before 1996, Aliens Who Unlawfully Crossed the Border Had More Rights And Protections Than Aliens Who Presented at A Port of Entry

Before 1996, under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*, aliens who attempted to enter the United States by presenting for inspection at a port of entry received less process and were subject to more restrictions than aliens who entered surreptitiously by crossing the border unlawfully. Specifically, aliens at a port of entry who could not demonstrate entitlement to admission were placed in "exclusion proceedings" and were subject to mandatory detention without the possibility of bond. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). In contrast, an alien who evaded inspection and physically entered the U.S. was placed in "deportation" proceedings and taken into custody under an arrest warrant, but could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Thus, physical entry – defined at that time as "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994) – "dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.

The pre-1996 INA framework had "unintended and undesirable consequence[s]." *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)); *see Hing Sum*, 602 F.3d at 1100 (similar). "[A]liens 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 (internal quotations omitted).

B. Congress Eliminates Preferential Treatment for Aliens Who Unlawfully Entered And Mandates Detention of All "Applicants for Admission"

In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress made numerous changes. *Inter alia*, as codified at 8 U.S.C. § 1225(a), Congress categorized presence in the United States as follows: "an alien *present* in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." (emphasis added). Further, Congress defined "admission" with a new modifier: "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). Thus, whereas previously the INA had separated aliens who had "enter[ed]" unlawfully from aliens who were being inspected at a port of entry, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," all "arriving aliens (i.e. aliens who have not yet entered) and aliens who are already present in the United States but did not enter lawfully." *Chen v. Almodovar*, No. 25-cv-8350, 2025 WL 3484855, at *3 (S.D.N.Y. Dec. 4, 2025). This new categorization fulfilled Congress's goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

Also codified at § 1225(a)(3), Congress defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission . . . shall be inspected by immigration officers"). (emphasis added). Applicants for admission, in turn, fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), with detention mandated for both, and the key difference being how fast their

removal is effectuated if they are inadmissible.

Section 1225(b)(1) applies only to applicants for admission who are "arriving in the United States," or have "not been admitted or paroled into the United States," and also, among other aliens, those who have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, IIRIRA created expedited removal proceedings. *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). 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 persecution"; in that event, the alien "shall be detained pending a final determination of credible fear of persecution and, if found not to have such fear, until removed." 8 U.S.C. § 1225(b)(1)(A)(i)-(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is broader and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. For them, § 1225(b)(2)(A) requires detention:

> Subject to Subparagraphs B and C in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under [8 U.S.C. §] 1229a.

8 U.S.C. § 1225(b)(2)(A) (emphasis added)[1]; *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring § 1225(b)(2)'s detention mandate); *Jennings*, 583 U.S. at 302 (§ 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin"). During removal proceedings, an alien may seek relief including asylum.

Section 1225(b)(1) and (2) "unequivocally mandate that aliens falling within their scope 'shall' be detained." *Jennings*, 583 U.S. at 300. "[D]etention must continue until immigration officers have finished 'consider[ing]' the application for asylum . . . or until removal proceedings have concluded." *Id.* at 299. Sections 1225(b)(1) and (2) contain no provision for a bond hearing. The only alternative is parole under 8 U.S.C. § 1182(d)(5)(A), which authorizes discretionary parole for "urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 288. However, Congress provided that when an alien is granted this discretionary parole, the parolee remains an applicant for admission. 8 U.S.C. § 1182(d)(5)(A) ("[P]arole of such alien shall not be regarded as an admission of the alien."); *accord* 8 U.S.C. § 1101(a)(13)(B); 8 C.F.R. § 1.2.

A neighboring statute, 8 U.S.C. § 1226(c), also provides for mandatory detention during removal proceedings of certain kinds of aliens and lacks this humanitarian parole option. Specifically, 8 U.S.C. § 1226(c), as amended by the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025), covers aliens with various types of criminal history. *Jennings*, at 287-89. For them, Congress permitted release only if the Department of Homeland Security ("DHS") determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. 8 U.S.C. § 1226(c)(4); *see Jennings*, 583 U.S. at 289 (quoting then-8

[1] Section 1225(b)(2)(A) does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

U.S.C.§ 1226(c)(2), now codified as 8 U.S.C. § 1226(c)(4)).

To § 1226(c), the LRA added § 1226(c)(1)(E)(i), (ii), (2) and (3). Under the LRA, an alien who is inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7), and is charged with, arrested for, or convicted of, specified types of crimes, shall be detained by DHS if "not otherwise detained by Federal, State, or local officials." § 1226(c)(3) Such an alien is not eligible for humanitarian parole and may only be released for the same limited set of reasons set forth in § 1226(c)(4), enumerated above.

C. Relevant Statutory Authority as to Unaccompanied Alien Children

1. The Homeland Security Act of 2002

In the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, Congress transferred to a component of HHS, the Office of Refugee Resettlement ("ORR"), the responsibility for caring for unaccompanied alien children ("UAC") "who are in Federal custody by reason of their immigration status." 6 U.S.C. § 279(b)(1)(A) (2002). That is, Congress gave ORR the initial responsibility of caring for any UAC. The HSA defines a UAC as a child who is not yet eighteen, lacks "lawful immigration status," and has no parent or legal guardian able to provide care and physical custody in the United States. 6 U.S.C. § 279(g)(2). Congress did not preclude UACs from being removed. *See* 8 U.S.C. § 1232(a)(5)(D).

2. Trafficking Victims Protection Reauthorization Act of 2008

In 2008, the Trafficking Victims Protection Reauthorization Act ("TVPRA") codified certain protections related to the custody of UACs. Congress required that "[e]xcept in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of [HHS] not later than 72 hours after determining that such child is a [UAC]." 8 U.S.C. § 1232(b)(3); *see also* 1232(b)(1). Thus, the HSA and TVPRA require that all UACs in DHS custody be

transferred to HHS, and that HHS provide for them so long as they remain in custody.

However, HHS does not retain custody of UACs until they turn eighteen. The TVPRA requires that UACs in HHS custody be "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). A UAC may be placed in a "secure facility" within ORR or if available in the care of a "suitable family member." *See id.* The latter placement divests HHS of custody of the child. *See* 45 C.F.R. § 410.1200. While 8 U.S.C. § 1232(c)(2)(B) provides a consideration of the least restrictive setting for a UAC — that is, "an unaccompanied alien child *in the custody of [HHS]*," 8 U.S.C. § 1232(c)(2)(A) — who "reaches 18 years of age *and is transferred to the custody of the Secretary of [DHS]*" (emphasis added), by its plain terms, this statute only applies to aliens who reach 18 while in the custody of HHS, and who are transferred to DHS. There is no provision that requires a consideration of the least restrictive setting for an alien no longer in custody at the time he turned 18.

II. PETITIONER'S RELEVANT IMMIGRATION AND DETENTION HISTORY

A. Petitioner Unlawfully Crosses The Southern Border, Is Detained By CBP, And Is Transferred to ORR Custody Before Being Released to a Sponsor

In February 2023, Petitioner unlawfully entered the United States in the Rio Grande Valley, Texas, outside of a port of entry, and when encountered by U.S. Customs and Border Protection ("CBP"), Petitioner admitted that he was a native and citizen of Honduras. *See* ECF 10-1 (Decl. of Michael O'Donohue dated Jan. 7, 2026 ("Decl.")), ¶ 3 & Ex. A. CBP served Petitioner with a Form I-200 warrant for his arrest, as well as a Notice to Appear ("NTA"), charging him with removability pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 3 & Exs. B-C. CBP also served a Notice of Custody Determination

reflecting that Petitioner would be detained. *Id.* ¶ 3 & Ex. D. Petitioner was determined to be an unaccompanied alien child ("UAC") and as a result was transferred to the custody of ORR. *Id.* ¶ 4. In March 2023, he was released from ORR custody to a sponsor. *Id.* ¶ 5. In November 2024, Petitioner turned 18.

B. Petitioner, Now an Adult, Is Detained and Placed in Removal Proceedings

On September 3, 2025, ICE encountered Petitioner near Uniondale, New York while conducting an action concerning a third party, at which time it took him into custody. *Id.* ¶ 7 & Ex. E. ICE served Petitioner with a new Form I-200 arrest warrant and served and filed a new NTA. *Id.* & Exs. F & G. Petitioner is currently detained at the Metropolitan Detention Center in Brooklyn, New York and his case remains pending before Immigration Court. *Id.* ¶¶ 9-10. Petitioner has never been admitted to the United States; he is an applicant for admission. *Id.* ¶ 11. Petitioner is being detained by ICE under 8 U.S.C. § 1225(b)(2)(A). *Id.*

III. THIS ACTION

Petitioner commenced this action on December 30, 2025. ECF No. 1. He alleges that he has a pending application for SIJ status based on a determination from Nassau County Family Court that reunification with one or both of his parents is not viable and that it is not in his best interest to return to Honduras. *Id.* at 8. Petitioner has informed the immigration court that he resides with his brother who has been appointed his guardian in Nassau County Family Court. *See* ECF No. 1 at 18. He argues that he is entitled to be released because he has no criminal history, poses no danger or flight risk, has a court-appointed guardian, and a stable residence. *Id.* at 8. He further argues that his detention violates the Due Process Clause of the Fifth Amendment as well as the TVPRA and the *Flores* Settlement. *Id.* In his request for relief, Petitioner, in relevant part, asks that the Court issue a writ of habeas corpus ordering his immediate release and enjoin ICE from re-detaining him absent lawful authority. *Id.* at 9 (Request for Relief).

ARGUMENT

I. PETITIONER'S DETENTION IS LAWFUL

A. Petitioner Is Lawfully Detained Under Section 1225(b)(2)(A)

1. The Text of Section 1225(b)(2)(A) Shows That It Applies Here

It is undisputed that Petitioner unlawfully entered the United States in February 2023, is now in removal proceedings, and has never been admitted. *See* Decl. ¶¶ 3, 10-11. By statute, such facts make Petitioner an "applicant for admission" because, even though he is present here and was previously released while a minor, he was not and has never been lawfully admitted. *See* 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109 ("'[A]n alien present in the United States who has not been admitted . . . ' is deemed 'an applicant for admission.'"). Section 1225(b)(2)(A) covers applicants for admission not covered by subsection (b)(1) "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." As an alien in removal proceedings, Petitioner is covered by the detention authority in 8 U.S.C. § 1225(b)(2), as he has not demonstrated to an examining officer that he is "clearly and beyond a doubt entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A).

Every "applicant for admission" is "seeking admission" and therefore covered by § 1225(b)(2)(A). Congress made the fact that "applicant for admission" is a subset of those who are "seeking admission" clear in § 1225(a)(3), which provides that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). That makes clear that "seeking admission" is the set and that "applicant for admission" is a category within that set. The word "'[o]therwise'" in § 1225(a)(3) "means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quotation omitted); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J.*

Reynolds Tobacco Co., 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular way or manner of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).

Neither the duration of an alien's unlawful presence in the United States nor his distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to," but did not in § 1225(b)(2)(A). *Mejia Olalde v. Noem*, No. 25-cv-00168, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025). By contrast, § 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say" in § 1225(b)(2)(A) "that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not.

None of this is to say that "seeking admission" has no meaning beyond "applicant for admission." As § 1225(a)(3) shows, being an "applicant for admission" is only one way or manner of "seeking admission," not the exclusive way. For example, returning lawful permanent residents are not "applicants for admission" but they still may be "seeking an admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). "Seeking admission" is "a term of art" that includes aliens, like Petitioner, who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [8 U.S.C. § 1225](a)(1)." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). "[M]any people who are not *actually* requesting to be admitted to the United States in the ordinary sense," as is true for

Petitioner, "are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743 (emphasis in original).

As an alien covered by § 1225(b)(2)(a), Petitioner "shall be" detained pending completion of his removal proceedings, and he has no access to a bond hearing or any other avenue to secure his release besides DHS's discretionary parole authority, which it has not exercised. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225(b)(2)(A) places Petitioner under its ambit, it mandates detention, and such text is where this Court's "analysis" should "begin[] and end[]." *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020).

2. Authority From The Supreme Court, Other Courts, And The BIA Confirm That Petitioner Is Covered by Section 1225(b)(2)

Detention under § 1225(b)(2)(A) here comports with Supreme Court precedent. Applicants for admission are covered either by § 1225(b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287. Section 1225(b)(1) covers applicants for admission who assert a credible fear of persecution, and it mandates detention. 8 U.S.C. § 1225(b)(1)(B)(ii), (B)(iii)(IV). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. And it mandates detention during removal proceedings. *Id.* at 297, 302.[2]

Several courts have confirmed Respondent's reading of § 1225. For example, in *Chen*, 2025 WL 3484855, the petitioner entered the United States without having been admitted, was released, and remained in the country unlawfully for two years. 2025 WL 3484855, at *2. He was

[2] *Jennings* did not rule on whether non-admitted or inadmissible aliens fell within § 1226(a) as opposed to § 1225(b)(2)(A), which is the issue here. Rather, it held that the duration of detention under either provision is not limited to a six-month time limit, as the Ninth Circuit had held. 583 U.S. at 292, 296-306. In reaching that holding, *Jennings* summarized § 1226 as applying to aliens "already in the country," 583 U.S. at 289, and elsewhere characterized it as applying to aliens "once inside the United States," *id.* at 288. But such language does not suggest that § 1226 is the *sole* detention authority for *every* "alien[] already in the country," as *Jennings* also refers to § 1226(a) as covering only aliens "present in the country" who are removable under 8 U.S.C. § 1227(a) – which is a provision that applies *only* to previously admitted aliens. *See* 583 U.S. at 288. The latter characterization of which individuals § 1226(a) covers hews closest to the text of the statute and is consistent with Respondent's argument.

later detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and he filed a habeas petition. *Id.* The court rejected the petition, holding that "under the plain language" of § 1225(b)(2)(A), Chen was subject to mandatory detention pending the resolution of his removal proceedings. *Id.* at *4.

Chen argued that he could be lawfully detained only under § 1226(a). But *Chen* held that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5-*7; *accord, e.g., Candido v. Bondi*, 2025 WL 3484932 at *2 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.)[3] (detention under § 1225 was proper for alien present unlawfully for two decades without having been admitted, and noting that "[t]he fact that more district courts . . . have decided this issue differently from this court is neither binding nor persuasive").[4]

The conclusion that Petitioner is detained under § 1225(b)(2)(A) is bolstered by recent persuasive authority from the BIA, which is the highest administrative body for interpreting and

---

[3] Chen and Candido have appealed to the Second Circuit. *See Chen v. Almodovar*, Case No. 25-3169 (2d Cir.); *Candido v. Bondi*, Case No. 25-3159 (2d Cir.). The Government has likewise appealed to the Second Circuit the adverse ruling on the same issue in *Da Cunha v. Freden*, 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025), and has requested that the appeal be expedited. *See Da Cunha v. Freden*, Case No. 25-3141 (2d Cir.).

[4] *Accord Liang v. Almodovar*, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Gutierrez Sosa v. Holt*, 2026 WL 36344 (W.D. Okl. Jan. 6, 2026) (Wyrick, J.); *Parra v. Secretary, Department of Homeland Security*, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026) (Dudek, J.); *Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025) (Buescher, J.); *Zuniga v. Lyons*, -- F. Supp. --, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.); *Montoya v. Holt*, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J.); *A.M. v. Joyce*, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.); *Calderon Lopez v. Lyons*, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) (Hendrix, J.); *Rivera Hernandez v. Noem*, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.); *E.R.J.B. v. Wofford*, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.); *Cruz Rodriguez v. Olson*, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025) (Pacold, J.); *Padilla v. Galovich*, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) (Peterson, J.); *Coronado v. Sec'y, DHS*, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.); *P.B. v. Bergami*, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.); *Garcia v. U.S. Attn'y Gen.*, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.); *Rodriguez v. Noem*, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.); *Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Melgar v. Bondi*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.); *Topal v. Bondi*, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Cruz v. Noem*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); *Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.); *Oliveira v. Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Garibay-Robledo v. Noem*, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.).

applying the INA. In *Matter of Yajure Hurtado*, the BIA held that the INA requires that all applicants for admission, including those who entered the United States without admission or inspection and resided here for years without lawful status, be detained under § 1225 for the duration of their removal proceedings and are "ineligible for a bond hearing." *Id.* at 225.

Matter of Yajure Hurtado is consistent with the plain language of the relevant statutes, Supreme Court precedent, and District Court decisions in this Circuit and elsewhere, as discussed above. *See Penaranda Arevalo v. Bondi*, 130 F.4th 325, 335-36 (2d Cir. 2025) (construing an INA statute in the same manner as a BIA decision that was consistent with Article III case law, notwithstanding *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024)). Like the aliens in the foregoing cases, Petitioner is subject to mandatory detention.

3. Petitioner's Detention Comports with Due Process

Petitioner claims that his detention violates the Due Process Clause of the Fifth Amendment. *See* Pet. at 8. This claim fails because for applicants for admission (such as Petitioner), receiving statutory process, as Petitioner has, suffices for due process.

To state a claim for procedural due process, Petitioner must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due to the plaintiff. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). The process owed is circumstance-specific. *Id.*

Because Petitioner is deemed an applicant for admission and thus treated for constitutional purposes as if stopped at the border,[5] he is lawfully detained pursuant to § 1225(b), 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

[5] Under the longstanding "entry fiction" doctrine, "aliens who arrive at ports of entry . . . are 'treated' for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139 (2020).

authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *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. "[A]n 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).

Supreme Court precedent confirms that applicants for admission are treated differently 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."). Congress has decided to treat applicants for admission differently by detaining them during proceedings to effectuate their removal from the United States. Unlike admitted aliens later placed in removal proceedings and detained under § 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.

The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, 591 U.S. at 139-40. The Court explained, "[w]hen an alien arrives at a port of entry — for example, an international airport — the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. Stated further, "aliens who arrive at ports of entry — even those paroled elsewhere in the country

for years pending removal — are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court was clear: "the Due Process Clause provides nothing more" than the process in 8 U.S.C. § 1225 that allows an individual to seek protection from removal if he fears return to his home country and to seek parole from the agency. *Id.*

Courts have applied this entry fiction to aliens who have "entered" and who have developed significant ties to this country during this time. *See e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (a 13-year old paroled into the care of relatives for nine years must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Mezei*, 345 U.S. at 214–215 (an alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"); *see also, e.g.*, *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("In concluding that *Thuraissigiam's* due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d. 200, 219-21 (S.D.N.Y. 2020) (following *Mezei*, holding due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute, and concluding that alien previously released from custody but not lawfully admitted was still considered "at the threshold of initial entry" over one year later for immigration purposes such that § 1225 still applied); *Salim v. Tryon*, No. 13-cv-6659, 2014 WL 1664413, *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."); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (petitioner paroled into the United States and continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due process amounts to

whatever the procedure authorized by Congress is") (cleaned up); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20-cv-159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) (plaintiff was subject to § 1225 notwithstanding "physical presence . . . in the United States for a lengthy period" and stating that "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"); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam*). Here, "because the immigration statutes at issue [ ] do not authorize a bond hearing, *Mezei* dictates that due process does not require one." *Poonjani*, 319 F. Supp. 3d at 649. Given that the 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.

Detention for the time-limited pendency of removal proceedings also does not run afoul of his substantive due process rights. A substantive due process claim must allege conduct that 'is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005) (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)). Conduct is conscience-shocking only if it was "intended to injure in some way unjustifiable by any government interest." *Lewis*, 523 U.S. at 849. Where no fundamental right is at stake, "governmental regulation need only be reasonably related to a legitimate state objective." *Goe v. Zucker*, 43 F.4th 19, 30 (2d Cir. 2022) (internal quotation omitted).

No court has ever held that an alien not lawfully admitted to the United States holds a fundamental right to remain at liberty in the United States. To the contrary, "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907

there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings"). That is because "an applicant for initial entry has no constitutionally cognizable liberty interest in being permitted to enter the United States." *Rafeedie v. INS*, 880 F.2d 506, 520 (D.C. Cir. 1989). 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 (citation omitted); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure.").

Detaining Petitioner is rationally related to the government's interest in enforcing immigration laws. *See Avramenkov v. INS*, 99 F. Supp. 2d 210, 217 (D. Conn. 2000) ("[I]t does not shock the conscience that a certain class of aliens subject to almost certain removal are detained pending removal"). Because Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A), *see Jennings*, 583 U.S. at 298-301, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212.

B. The Government Respectfully Disagrees with Prior Decisions Concluding that Aliens Like Petitioner Are Covered by Section 1226

Petitioner is not covered by § 1226(a) and is not entitled to a bond hearing. Section 1226(a), in general, covers individuals who, unlike applicants for admission, have already been admitted to, such as those admitted through a tourist, business, student, or other type of visa, but who have overstayed or violated its terms, or who have been found later not to have been lawfully admitted. For them, detention is discretionary. The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2).[6] The

[6] Conditional parole under § 1226(a) is distinct from humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007). It is the latter that is applicable to 8 USC 1225(b)(2)(A) detentions.

alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal the determination to the BIA. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

Reading § 1226(a) to cover those like Petitioner would return immigration law to its pre-IIRIRA construct and contradict the purpose of IIRIRA: to ensure that aliens who enter the country illegally are not treated more favorably than those who seek admission through the proper channels. *See Chavez*, --- F. Supp. 3d ---, 2025 WL 2730228, at *4. Before 1996, the INA incentivized aliens to enter the United States surreptitiously because they had more process and protections (namely, a bond hearing) than aliens "seeking admission" at a port of entry (requiring mandatory detention). *See* 8 U.S.C. § 1225(a)-(b) (1995). Under the pre-IIRIRA regime, Petitioner would have fallen into the category of aliens who could seek bond because he is present here. But through § 1225(a)(1), Congress corrected this "anomaly" to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *Hing Sum*, 602 F.3d at 1100. Hence, the pivotal factor in determining Petitioner's status after IIRIRA is "whether or not [he] has been lawfully admitted," not whether he physically entered the United States. *Matter of Hurtado*, 29 I. & N. Dec. at 223-24. As an alien who surreptitiously crossed the border, was apprehended, and is now in removal proceedings, Petitioner remains an "applicant for admission," so he is not entitled to a bond hearing, as "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297.

To be sure, other judges, including Your Honor, have reached contrary holdings. *See, e.g.*, *J.U. v. Maldonado*, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Artiga v. Genalo*, 2025 WL 2829434, at *7-8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.). In *J.U.* and *Artiga*, the Court found that the petitioners in those cases were detained under § 1226, not § 1225, because,

inter alia, (i) the petitioners' arrest warrants and custody determinations referred to § 1226, (ii) a finding that petitioners were detained pursuant to § 1225(b)(2) would render superfluous the phrase "seeking admission" in that provision, as "seeking admission" means something different than "applicant for admission," and an alien who is already in the country is not "seeking admission," and (iii) the LRA, requiring mandatory detention when an alien is both an applicant for admission *and* has committed an enumerated crime, would be rendered superfluous by a finding that petitioners are subject to § 1225. *J.U.*, 2025 WL 2772765, at *4-9; *Artiga*, 2025 WL 2829434, at *6-8. The Court thus held that the petitioners' re-detention violated due process.

The government respectfully submits that the Court's interpretation of the phrase "seeking admission" is inconsistent with how Congress defined and used both the terms "applicant for admission" and "seeking admission" in § 1225. Section 1225(b)(2) requires the detention of "an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Congress also provided in § 1225(a)(3) that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). "Applicants for admission" is thus a subset of aliens who are "seeking admission," and no additional affirmative step to qualify as "seeking admission" is necessary. An alternative conclusion would read the "otherwise" modifier out of § 1225(a)(3), which confirms that "applicant for admission" is a particular "way or manner" of seeking admission, such that one who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A). *See Texas Dep't of Hous. & Cmty. Affs.*, 576 U.S. at 535; *Att'y Gen. of United States*, 104 F.4th at 354; *Villarreal*, 839 F.3d at 963-64; *Kleber*, 914 F.3d at 482-83.

"[N]othing in the text of Section 1225 or the logic of the immigration system supports a

ruling that 'seeking admission' is an *additional requirement* for mandatory detention" for coverage by § 1225. *Chen*, 2025 WL 3484855 at *5. Such a conclusion would create the "perverse" incentive for an alien present here but not admitted to lay in wait and not "do[] something" towards admission, lest he trigger mandatory detention under § 1225. *Id.* That, however, "is not the system defined by Section 1225," which, by design, "groups together for the same treatment aliens arriving at the border and aliens who are present illegally in the United States." *Id.*

Respondent respectfully submits that the other decisions perceiving aliens "seeking admission" and "applicant for admission" as distinct categories are similarly flawed.[7] These courts reasoned that the phrase "seeking admission" in § 1225(b)(2)(A) had to be distinct from the phrase "applicant for admission" used elsewhere in § 1225, otherwise it would be superfluous. But this ignores that 8 U.S.C. § 1225(a)(1) states that "an alien *present in the United States* who has not been admitted . . . *shall be deemed for purposes of this chapter an applicant for admission*" (emphasis added). Thus, it was Congress that deemed all aliens present in the United States who have not been admitted as "applicants for admission," regardless of whether they are "doing something" to seek admission. *See Chen*, 2025 WL 3484855, at *4-5 (the holdings of district courts in this Circuit that 1225(b) mandatory detention does not apply to aliens who are not seeking admission contradict "defined statutory text"); *Chavez*, 2025 WL 2730228, at *4 (aliens who were present in the United States and have not been admitted are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *accord Alonzo*, --- F. Supp. 3d ---, 2025 WL 3208284, at *4; *Olaide*, 2025 WL 3131942, at *3.

[7] *See, e.g.*, *Montoya v. Bondi*, 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Crespo Tacuri v. Genalo*, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026); *Ye v. Maldonado*, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.); *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, --- F. Supp. 3d. ---, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.); *see also Guerrero v. Noem*, 2025 WL 3214787, at *3-6 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.) (granting preliminary relief and setting briefing schedule on dismissing the habeas petition).

Additionally, while Your Honor has reasoned that the Government's interpretation of § 1225(b) renders superfluous the mandatory detention provision of § 1226(c), as amended in the LRA. *J.U.*, 2025 WL 2772765, at *4-9; *Artiga*, at *6-8, Respondent respectfully disagrees. The mandatory detention provisions of § 1226(c) – which apply only to certain types of aliens, some of whom have criminal histories – differ from the mandatory detention provision of § 1225(b)(2)(A) in at least one important respect: the avenue and governing standards by which the covered alien may be released. An alien detained under § 1226(c) may be released only on grounds set forth in § 1226(c)(4) – *i.e.*, if the release "is necessary to provide protection to a person who is a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate" of such persons; and if the alien "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding."[8] By contrast, a person subject to mandatory detention under § 1225(b)(2)(A) may be released on parole under 8 U.S.C. § 1182(d)(5)(A) for "urgent humanitarian reasons or significant public benefit," wholly at the Government's discretion, which is unlike the strict criteria in the release provision relevant to the LRA, § 1226(c)(4). Thus, there is no superfluity between § 1225(b)(2)(A), on the one hand, and § 1226(c) – both before and after it was amended by the LRA – on the other hand. As another district court has recognized, the LRA "simply removed the Attorney General's detention discretion for aliens charged with specific — but not all — crimes." *Chavez*, 2025 WL 2730228, at *5; *accord Valencia*, 2025 WL 3205133, at *4 (E.D. Cal. Nov. 17, 2025); *Rojas*, 2025 WL 3033967, at *9.[9]

---

[8] As *Chen* noted, the legislative history of the LRA reflects that "many members of Congress thought it necessary to enact a new law mandating detention in more circumstances because of their perception that the Executive Branch had failed to enforce the detention options that were already available to it." *Chen*, 2025 WL 3484855, at *6.

[9] Decisions to the contrary do not take account of the different options for release that the LRA precluded to certain individuals and are therefore incorrect in identifying the LRA as evidence that the Government's argument was in error. *J.U.*, 2025 WL 2772765, at *7; *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *8. Indeed, in *Artiga*, Your Honor recognized that parole is a form of "politically sensitive" relief from mandatory detention under

Additionally, while courts have rejected the government's interpretation of Section 1225 based on the fact that it previously used documents that applied Section 1226, and thus interpreted the provision differently, that is not dispositive. *See, e.g.*, *J.U.*, 2025 WL 2772765, at *5, *Artiga*, 2025 WL 2829434, at *6. DHS may change its interpretation, provided that it offers a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Chen*, 2025 WL 3484855, at *7 & n.1 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024)) ("failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law").[10]

At bottom, the decisions holding § 1226(a) applicable to an alien present inside the United States prior to detention have not addressed a critical issue: "How does a court determine when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya*, 2025 WL 3733302, at *2 (W.D. Okla). And "[i]f [an alien] is not admitted to the United States . . . but he is not 'seeking admission[,]' . . . then what is his legal status?" *See Matter of*

---

§ 1225; yet it is also important to note that the LRA precluded certain applicants for admission who had been charged with certain crimes from that benefit by making detention mandatory under a statute that did not afford that relief. *See Rojas*, 2025 WL 3033967, at *9 ("Nothing in the LRA suggests any Congressional thoughts concerning [the interpretation of Sections 1225 or 1226].").

[10] Even if DHS changed its interpretation of a statute or previously issued documents suggesting Petitioner was covered by a different detention authority, it cannot, as a matter of law, be estopped from implementing its new interpretation. *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation and "'[a]n administrative agency is not disqualified from changing its mind'"). And even if *arguendo*, the normal rules of estoppel against the Government applied, they would be unavailing. The Government may not be estopped on the same terms as any other litigant." *Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). Estoppel is applied against the Government only "'in the most serious of circumstances' . . . and is applied 'with the utmost caution and restraint.'" *Rojas-Hayes v. INS*, 235 F.3d 115, 126 (2d Cir. 2000) (quotations omitted). "In order to apply such estoppel against the Government, there must be "a showing of 'affirmative misconduct' by the [G]overnment." *Id.* (quotation omitted). A party must establish "*both* that the Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.'"). *See Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (citing *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994)). Mere negligence is insufficient. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010); *see also Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 558-59 (W.D.N.Y. 2020) (concluding that the Government could not be estopped from taking the position that the petitioner was subject to detention under § 1225(b) simply because it previously treated him as detained pursuant to § 1226(a)).

Hurtado, 29 I. & N. at 221. There is "no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under [8 U.S.C. § 1226(a)]." *Matter of Hurtado*, 29 I. & N. at 221. Neither the duration of unlawful presence nor distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde* 2025 WL 3131942, at *4 ; *see* 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. For § 1225, it did not. Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission."

Reading § 1225(b)(2) to mandate detention for any "applicant for admission" accords with the text as enacted by Congress. Petitioner falls within the statutory definition of "applicant for admission." He was "present in the United States," there is no dispute that he has "not been admitted," and he does not fall within any of the exceptions to § 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B). Moreover, he cannot establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A). Concluding that § 1225 authorizes mandatory detention for aliens actively seeking admission at ports of entry but not for those who evade inspection would contradict Congressional intent and return the law to its pre-1996 state.

II. Neither Petitioner's Pending SIJ Petition, the TVPRA, nor the Flores Settlement Forecloses Detention

Equally unavailing is Petitioner's contention that his pending SIJ application forecloses detention. It does not. An *approved* SIJ petition (let alone a pending petition) does not provide any protection from detention or removal.[11] *See Benito Vasquez v. Moniz*, No. 25-cv-11737, 2025 WL 1737216, at *2 (D. Ma. June 23, 2025) ("The fact that petitioner has been given [SIJ] status has no effect on ICE's statutory and regulatory authority to detain him. Other federal courts have routinely recognized that SIJ status alone does not render an alien lawfully present in the country and thus does [not entitle] him to release, nor does it prevent the government from affecting his removal."); *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (explaining that while "[t]he SIJ program offers aliens a multitude of benefits and protections, including the opportunity to seek lawful permanent resident status[,] ... [i]n and of itself, though, an SIJ designation does not strip the U.S. government of all removal powers."); USCIS Policy Alert-2022-10, available at https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf ("SIJ classification does not render a noncitizen lawfully present[] [and] does not confer lawful status.").[12]

Nor does the TVPRA foreclose detention. While it, in relevant part, requires that *UACs in HHS custody* be "promptly placed in the least restrictive setting that is in the best interest of the child," 8 U.S.C. § 1232(c)(2)(A), that provision has is inapplicable here because Petitioner was not a UAC, nor was he in HHS custody when he reached the age of 18 nor at the time he was

[11] An individual with approved SIJ status can apply for adjustment of status if they are eligible, admissible, and an immigrant visa is immediately available. If an application for adjustment of status is granted, the individual receives Lawful Permanent Resident status. 8 U.S.C. § 1255; 8 C.F.R. § 245.1(e)(3)(i). However, to adjust status, "an immigrant visa [must be] immediately available" at the time an application is filed and adjudicated. 8 U.S.C. § 1255(a). Prior adjusting status, an individual who obtains SIJ status is still subject to arrest, detention, and removal from the United States if a final order of removal is entered against such individual.

[12] While Petitioner cites the Second Circuit's decision in *Lora v. Shanahan*, 804 F.3d 601, 616 (2d Cir. 2015), *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), for the proposition that "[d]etaining a youth with valid SIJS findings serves no legitimate governmental interest and violates due process," Pet. at 12, that proposition appears nowhere in that decision, which did not concern an alien with pending or approved SIJS status.

detained by ICE. He was not transferred from HHS to DHS custody. He does not dispute that he turned 18 in 2024 and acknowledges that, prior to his detention by ICE in September 2025, he had long since been released by HHS. *See* ECF No. 1 at 18 (acknowledging residence with Petitioner's brother as well as Petitioner's date of birth, which rendered him over 18 at the time of his detention in September 2025); *see also* 6 U.S.C. § 279(g)(2) (UAC status dependent on alien being under 18 years of age). Thus, the TVPRA does not require that Petitioner, now an adult and never transferred from ORR to DHS custody, be detained in the least-restrictive setting.

For similar reasons, the *Flores* Settlement does not foreclose Petitioner's detention because that agreement requires that "minors in government custody" be detained in the least restrictive setting, but Petitioner is no longer a minor. *See Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 206 n.1 (S.D.N.Y. 2020) (explaining that *Flores* Settlement defined "minor" as "any person under the age of eighteen (18) years who is detained in the legal custody of" DHS).

CONCLUSION

For the reasons stated herein and in Respondent's letter, the Petition should be denied.

Dated: Brooklyn, New York
January 12, 2026

Respectfully submitted,

JOSEPH NOCELLA, JR.
UNITED STATES ATTORNEY
Eastern District of New York
Attorney for Respondents
271-A Cadman Plaza East
Brooklyn, New York 11201

By: */s/ Kimberly A. Francis*
Kimberly A. Francis
Assistant United States Attorney
(718) 254-6147
kimberly.francis@usdoj.gov