UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN CARLOS DERAS ARANA,

Petitioner,

v.

PAUL ARTETA, *et al.*,

Respondents.

No. 26-cv-240 (GHW)

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

JAY CLAYTON
United States Attorney for the
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. (212) 637-0378
leslie.ramirez-fisher@usdoj.gov

LESLIE A. RAMIREZ-FISHER
Assistant United States Attorney

– Of Counsel –

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 2

I. Legal Background 2

II. Factual Background 6

III. Procedural History 8

ARGUMENT 9

I. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1225(b) and Is Therefore No Entitled To a Bond Hearing 9

A. *Bautista v. Santacruz* 16

II. Petitioner's Detention Comports with Due Process 17

III. Petitioner's Claim under the APA Fails 22

IV. Petitioner's *Accardi* Doctrine Claim Fails 23

V. Should the Court Determine that Petitioner is Detained Pursuant to Section 1226(a), Petitioner May Challenge His Petition Through a Bond Hearing 24

Conclusion 26

TABLE OF AUTHORITIES

Page(s)

Cases

Abbey v. Sullivan,
978 F.2d 37 (2d Cir. 1992) 26
Abel v. United States,
362 U.S. 217 (1960) 2
Alonzo v. Noem,
No. 25 Civ. 1519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) 14
Altamirano Ramos v. Lyons,
No. 25 Civ. 9785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) 14
Al-Thuraya v. Warden,
No. 25 Civ. 2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) 20, 21
Araujo-Cortes v. Shanahan,
35 F. Supp. 3d 533 (S.D.N.Y. 2014) 26
Aschcroft v. Iqbal,
556 U.S. 662 (2009) 22
Barbosa Da Cunha v. Freden,
No. 25-CV-6532-MAV, 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025) 14
Barco Tucciarone v. Francis,
No. 25 Civ. 6582 (LAK), 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) 13
Bautista v. Santacruz,
No. 25 Civ. 1873 (SSS) (BFM), 2025 WL 3288043 (C.D. Cal. Nov. 25, 2025) 16
Beharry v. Ashcroft,
329 F.3d 51 (2d Cir. 2003) 26
Black v. Decker,
103 F.4th 133 (2d Cir. 2024) 21
Castillo Lachapel v. Joyce,
786 F. Supp. 3d 860 (S.D.N.Y. 2025) 26
Chavez v. Noem,
No. 25 Civ. 2325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) 14, 16
Chen v. Almodovar,
25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) 12, 13, 15
Chen v. Almodovar,
25 Civ. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) 12, 15
Comes v. DeLeon,
No. 25 Civ. 9283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) 13
Cruz-Miguel v. Holder,
650 F.3d 189 (2d Cir. 2011) 25
Demore v. Kim,
538 U.S. 510 (2003) 20
Encino Motorcars, LLC v. Navarro,
579 U.S. 211 (2016) 23
Ferreira Candido v. Bondi,
No. 25 Civ. 867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) 14

Fontanelli ex rel. Bernal Garcia v. Francis,
No. 25 Civ. 7115 (JLR), 2025 WL 2773234 (S.D.N.Y. Sept. 29, 2025) ... 26
Gonzalez v. Joyce,
No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) ... 13
Good Samaritan Hosp. v. Shalala,
508 U.S. 402 (1993) ... 23
Guzman Andujar v. Francis,
No. 25 Civ. 9199 (JLR), 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025) ... 13
Guzman Cardenas v. Almodovar,
No. 25 Civ. 9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) ... 13
Guzman v. Joyce,
786 F. Supp. 3d 865 (S.D.N.Y. 2025) ... 26
Guzman v. Tippy,
130 F.3d 64 (2d Cir. 1997) ... 18
Hing Sum v. Holder,
602 F.3d 1092 (9th Cir. 2011) ... 3
Huamani v. Francis,
No. 25 Civ. 8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) ... 13
Iqbal,
566 U.S. ... 23
J.G.O. v. Francis,
No. 25 Civ. 7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) ... 13
Jennings v. Rodriguez,
583 U.S. 281 (2018) ... passim
Jennings,
v. Rodriguez, 583 U.S. 281 (2018) ... 10
Johnson v. Guz,
man Chavez, 594 U.S. 523 (2021) ... 24
Johnson v. Guzman Chavez,
594 U.S. 523 (2021) ... 5
Judulang v. Holder,
565 U.S. 42 (2011) ... 2, 3
Kirtsaeng v. John Wiley & Sons, Inc.,
568 U.S. 519 (2013) ... 12
Landon v. Plasencia,
459 U.S. 21 (1982) ... 2
Landon,
*v. Plasenci*a, 459 U.S. 21 (1982) ... 20
Lopez Benitez v. Francis,
No. 25. Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) ... 13, 14
Martinez v. Att'y Gener,
al of U.S., 693 F.3d 408 (3d Cir. 2012) ... 4
Matter of Adeniji,
22 I. & N. Dec. 1102 (BIA 1999) ... 6, 7
Matter of Cabrera-Fernandez,
28 I. & N. Dec. 747 (BIA 2023) ... 25

Matter of D-J-,
23 I. & N. Dec. 572 (A.G. 2003) 5
Matter of Guerra,
24 I. & N. Dec. 37 (BIA 2006) 25
Matter of Yajure Hurtado,
29 I. & N. Dec. 216 (BIA 2025) .... passim
Matter of Yajur,
*e Hurta*do, 29 I. & N. Dec. 216 (BIA 2025) 11
Mejia Olalde v. Noem,
No. 25 Civ. 168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 14
Mendez Ramirez v. Decker,
612 F. Supp. 3d 200 (S.D.N.Y. 2020) 19
Nielsen v. Preap,
586 U.S. 392 (2019) 24
Ortega-Cervantes v. Gonzales,
501 F.3d 1111 (9th Cir. 2007) 25
Perez v. Francis,
No. 25 Civ. 8112 (JGK), 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) 24
Poonjani v. Shanahan,
319 F. Supp. 3d 644 (S.D.N.Y. 2018) 19
Quispe-Sulcaray v. Noem,
No. 25 Civ. 9908 (VEC), 2025 WL 3501207 (S.D.N.Y. Dec. 7, 2025) 13
Rojas,
2025 WL 3033967 14
Rueda Torres v. Francis,
No. 25 Civ. 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) 13
Rumsfeld v. Padilla,
542 U.S. 426 (2004) 17
Samb v. Joyce,
No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) 13
Sandoval v. Acuna,
No. 25 Civ. 1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) 14
Savane v. Francis,
801 F. Supp. 3d 483 (S.D.N.Y. 2025) 9, 17, 18
Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953) .... passim
Sun v. Almodovar,
No. 25 Civ. 9262 (PKC), 2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025) 24
Thuraissigiam,
591 U.S. 103 (2020) 4, 18, 19
Martinez v. Att'y General of U.S.,
693 F.3d 408 (3d Cir. 2012) 3
Trump v. J.G.G.,
604 U.S. 670 (2025) 17, 22
United States ex rel. Accardi v. Shaughnessy,
347 U.S. 260 (1954) 23

United States ex rel. Knauff v. Shaughnessy,
338 U.S. 537 (1950) 14, 18, 19
United States ex rel. Kordic v. Esperdy,
386 F.2d 232 (2d Cir. 1967) 18
Vargas Lopez v. Trump,
No. 25 Civ. 526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) 14, 15
Velasco Lopez v. Decker,
978 F.3d 842 (2d Cir. 2020) 20, 25
Zadvydas v. Davis,
533 U.S. 678 (2001) 18, 20, 22

Statutes

5 U.S.C. § 704 22
8 U.S.C. § 1225(a)(1) 10, 12, 13, 18
8 U.S.C. § 1225(a)(3) 4
8 U.S.C. § 1225(b)(2)(A) .... passim
8 U.S.C. § 1226(a) 2, 5, 16, 17
8 U.S.C. § 1226(b) 25
8 U.S.C. § 1229a 5, 9, 15
8 U.S.C. § 1101(a)(13) (1994) 2, 4
8 U.S.C. § 1101(a)(13)(A) 4, 10
8 U.S.C. § 1182(a)(6) 10
8 U.S.C. § 1182(d)(5)(A) .... passim
8 U.S.C. § 1225(a) 14
8 U.S.C. § 1225(B) 9
8 U.S.C. § 1226 12
8 U.S.C. § 1226(a)(1) 5, 24
8 U.S.C. § 1226(a)(2) 25
Pub. L. No. 107-296 5
U.S.C. § 1182(d)(5)(A) 5
U.S.C. § 1225(b)(2)(A) 5, 15
U.S.C. § 1226(a) 5, 24

Rules

Fed. R. Civ. P. 12(b)(6) 22
Fed. R. Civ. P. 54(b) 16

Regulations

8 C.F.R. § 235.1 4
8 C.F.R. § 1003.1(g) 11
8 C.F.R. § 1003.19 25
8 C.F.R. §§ 236.1 .... 8, 17, 24, 25
8 C.F.R. §§ 212.5(b) 15
8 C.F.R. §§ 236.1(d)(1) 25
8 C.F.R. § 1003.19(d) 5, 25
C.F.R. §§ 236.1 8

Respondents (the "Government") respectfully submit this memorandum of law in opposition to the petition for a writ of habeas corpus, ECF No. 1 ("Pet."), filed by Juan Carlos Deras Arana ("Petitioner").

PRELIMINARY STATEMENT

Petitioner is a citizen of Guatemala. At an unknown place and time, which Petitioner claims was at or near the Arizona border in October 2002, Petitioner entered the United States illegally. In April 2015, Petitioner filed an application for an immigration benefit with the U. S. Citizenship and Immigration Services ("USCIS"), and in July 2017, USCIS initiated removal proceedings through service of a Form I-862, Notice to Appear ("NTA"), which charged Petitioner as inadmissible pursuant to section 212(a)(6)(A)(i) of Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. In April 2023, upon joint motion of the Department of Homeland Security ("DHS") and Petitioner, the immigration judge ("IJ") dismissed the removal proceedings without prejudice.

During an encounter with U.S. Immigration and Customs Enforcement ("ICE"), on December 26, 2025, Petitioner stated that he possessed no documentation to be present in the U.S. legally and that he had no petitions or applications pending with USCIS. A DHS records check in the field did not reveal legal entry or legal immigration status. Therefore, Petitioner was issued a Warrant for Arrest, Form I-200, arrested and transported to 26 Federal Plaza for processing.

On January 12, 2026, counsel for Petitioner filed the instant petition. ECF No. 1. In the petition, Petitioner asserts that his detention violates the INA, DHS bond regulations, and Petitioner's Fifth Amendment due process rights, because he is being detained without entitlement to a bond hearing.

The petition should be denied. Because Petitioner is an applicant for admission who is in removal proceedings, under precedent from the Board of Immigration Appeals ("BIA"), Petitioner

is detained under INA § 235, 8 U.S.C. § 1225(b)(2)(A), and is thus subject to mandatory detention and potential release only on discretionary parole by DHS. If the Court determines that Petitioner is instead detained pursuant to INA § 236, 8 U.S.C. § 1226(a), Petitioner would then be entitled to request a bond hearing before an immigration judge, which would afford him sufficient process to contest his detention and seek release.

Accordingly, the Court should deny the petition.

BACKGROUND

I. Legal Background

For more than a century, the immigration laws have authorized immigration officials to arrest and detain certain aliens subject to removal during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233-34 (1960). The INA contains a comprehensive framework governing the regulation of aliens, including creation of proceedings for the removal of aliens who unlawfully enter the United States or are otherwise removable and requirements for when the Executive is obliged to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien presented at a port of entry or evaded inspection and entered the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-24 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251(a) (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45-46 (2011) ("Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an 'exclusion proceeding' and an alien already here channeled to a 'deportation proceeding.'" (citing *Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982))). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of

[immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2011).

Whether the alien had entered the country also determined whether the alien would be detained pending those exclusion or deportation proceedings. An alien who sought admission at a port of entry and who was determined to be excludable was placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1182(d)(5) (1994)). By contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1251(a) (1994)); *Judulang*, 565 U.S. at 45. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

Yajure Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.").

Congress discarded that prior regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, Div. C, 110 Stat. 3009 (Sept. 30,

1996). IIRIRA replaced the focus on physical "entry" and instead made lawful "admission" the touchstone. *Martinez*, 693 F.3d at 413 n.5. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws no longer distinguish between aliens based on whether they dutifully presented to an immigration officer or instead managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" is "whether or not the alien has been *lawfully* admitted." House Rep. at 225 (emphasis added); *see also Martinez*, 693 F.3d at 413 n.5. IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Yajure Hurtado*, 29 I. & N. Dec. at 223; *see also Martinez*, 693 F.3d at 413 n.5.

Under the current statutory regime post-IIRIRA, pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining the term "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"); 8 C.F.R. § 235.1.

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and it provides for expedited removal proceedings in certain circumstances. 8 U.S.C. § 1225(b)(1); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). Section 1225(b)(2)(A) provides for the inspection of all "other" applicants for admission, and it states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt

entitled to be admitted, the alien *shall be detained* for a proceeding under section [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

While § 1225(b)(2)(A) does not allow for aliens to be released on bond, the INA grants DHS discretion to temporarily release an applicant for admission "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as an admission of the alien." *Id.*; *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (discussing parole authority). Moreover, when DHS determines that "the purposes of such parole . . . have been served the alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

In contrast, aliens who are not applicants for admission may (but need not) be detained at the Government's discretion. Pursuant to 8 U.S.C. § 1226(a), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Attorney General and DHS thus have broad discretionary authority to determine whether to detain an alien during removal proceedings.[1] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings). Under § 1226(a)(1), "[t]o secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*,

---

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

594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). This provision governs the detention of aliens who were admitted to the country, but later became deportable and are subject to removal proceedings under § 1229a—for example, admitted aliens who overstay or otherwise violate the terms of their visas.

II. Factual Background

Petitioner is a citizen of Guatemala. Declaration of Supervisory Detention and Deportation Officer Timothy Nevin ("Nevin Decl.") ¶ 3. According to Petitioner, he entered the United States without inspection by an immigration officer at or near Arizona in October 2002. Nevin Decl. ¶ 6. In April 2015, Petitioner filed an application for an immigration benefit with USCIS. Nevin Decl. ¶ 4. USCIS subsequently initiated removal proceedings against Petitioner through service of a Form I-862, NTA, which charged Petitioner as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled. Nevin Decl. ¶ 4; Ex. A[2]. During Petitioner's initial master calendar hearing before an IJ, Petitioner, through counsel admitted to the factual allegations in the NTA and admitted removability. Nevin Decl. ¶ 6. It was at this time, Petitioner claimed that he had entered the United States illegally near the Arizona border in October 2002. *Id.* On April 11, 2023, the IJ dismissed the removal proceedings without prejudice on grounds of prosecutorial discretion upon joint motion by DHS and Petitioner. Nevin Decl. ¶ 7.

On December 26, 2025, ICE officers encountered Petitioner while conducting checks on various vehicles in White Plains, New York. Nevin Decl. ¶ 8; Ex. B. ICE officers conducted a record check of a 1996 GMC and determined that the vehicle was registered to Petitioner. Nevin

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

Decl. ¶ 8. DHS records check revealed that Petitioner had a prior immigration history. *Id.* The ICE officers approached Petitioner, who matched the description of the registered vehicle owner of the GMC, as he approached the vehicle. *Id.* The ICE officers asked Petitioner for identification, and he voluntarily produced his Guatemalan identification card. *Id.* Petitioner stated that he possessed no documentation to be present in the U.S. legally and that he did not have any application pending with USCIS. *Id.* DHS records check in the file did not reveal any legal entry or legal immigration status for Petitioner. *Id.* ICE issued an I-200, Warrant of Arrest, then informed Petitioner he was under arrest and transported him to 26 Federal Plaza for processing. *Id.*; Ex. C.

At 26 Federal Plaza, on December 26, 2025, ICE personally served Petitioner with an NTA, charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the U.S. without being admitted or paroled, and for having entered the U.S. at a time or place other than as designated by the Attorney General and 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not in possession of a valid entry document. Nevin Decl. ¶ 9; Ex. D. The NTA directed Petitioner to appear before an IJ on January 5, 2026. *Id.*

The same day, DHS filed the NTA with immigration court, thereby commencing removal proceedings against the Petitioner. Nevin Decl. ¶ 10. On December 27, 2026, Petitioner was transferred to Orange County Jail in Goshen, New York. Nevin Decl. ¶ 11. At Petitioner's master calendar hearing on January 7, 2026, through counsel, he admitted to the factual allegations and conceded to the inadmissibility charge under 8 U.S.C. 1182 (a)(6)(A)(i). *Id.* DHS withdrew the charge under § 1182 (a)(7)(A)(i)(I). *Id.* On the same day, Petitioner requested a bond hearing, which was scheduled for January 14, 2026. *Id.*

On January 12, 2026, Petitioner was transferred to the Metropolitan Detention Center ("MDC") in Brookyln. Nevin Decl. ¶ 14.

On January 14, 2026, the IJ conducted a custody redetermination hearing, where the Petitioner withdrew his request for a bond review and the immigration issued an order withdrawing it without prejudice. Nevin Decl. ¶ 15.

Petitioner remains detained at the MDC under 8 U.S.C. § 1225(b)(2)(A), as an alien who has not been admitted or paroled into the United States. Nevin Decl. ¶ 16. At no time has Petitioner been admitted to the United States. Nevin Decl. ¶ 17.

III. Procedural History

On January 13, 2026, Petitioner filed the petition. ECF No. 1. In the petition, Petitioner asserts that "the mandatory provisions of 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject the grounds of inadmissibility." Pet. ¶ 50. He claims that as relevant to this case, "it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed into removal proceedings by Respondents." *Id.* He asserts that "[s]uch noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231." *Id.* Petitioner asserts that "the application of § 1225(b)(2) to [him] unlawfully mandates his continued detention under the INA." *Id.* ¶ 51.

Petitioner further asserts that Respondents' failure to provide a bond hearing violates 8 C.F.R. §§ 236.1, 12361, and 1003.19. *Id.* ¶ 55. He also asserts that his detention without a bond hearing to determine whether he is a flight risk or danger to others violates his due rights under the Fifth Amendment, *id.* ¶¶ 57-58. Petitioner requests, *inter alia*, that the Court declare Petitioner's detention to be unconstitutional and a violation of the INA, its implementing regulations, the APA, and the *Accardi* doctrine; and order Petitioner's immediate release. Pet., Prayer for Relief.

ARGUMENT

In *Savane v.* Francis, 801 F. Supp. 3d 483, 492 (S.D.N.Y. 2025), this Court declined to resolve the question that had been presented, "whether the text of § 1225 mandates detention of all noncitizens who are 'applicants for admission,' including those noncitizens who are physically present in the United States and those were initially released under § 1226." *Id.* at 490. The Court found that, irrespective of the applicable detention provision, the re-detention of the petitioner, who had been previously released on his own recognizance under § 1226, did not comport with due process. *Id.* at 490-91. Because *Savane* did not address the issue of whether § 1225(b)(2)(A) mandated detention of the petitioner, and unlike the petitioner in *Savane*, Petitioner was not previously detained and then released on his own recognizance (nor paroled), *Savane* is not controlling here. For the foregoing reasons, the Court should conclude that Petitioner is properly detained under § 1225(b)(2)(A) and that he has received all the due process that is required.

I. Petitioner Is Lawfully Detained Pursuant to 8 U.S.C. § 1225(b) and Is Therefore Not Entitled to a Bond Hearing

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

Petitioner argues that § 1226(a), rather than § 1225(b)(2)(A), applies and therefore he entitled to a bond hearing while in detention. Pet. ¶¶ 49-55. However, Petitioner falls within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Under the applicable statutory

framework, Petitioner is an "applicant for admission" to the United States because he is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1) (providing that "[a]n alien present in the United States who has not been admitted . . . *shall be deemed* for purposes of this chapter an applicant for admission"); *see id.* § 1101(a)(13). Because Petitioner is an "applicant for admission," he "shall be detained" during removal proceedings if "the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Petitioner has not—and cannot—demonstrate that he is "clearly and beyond a doubt entitled to be admitted," because, as charged in his removal proceedings, he is present in the United States without being admitted or paroled (and/or he arrived in the United States at a time and place other than as designated by the Attorney General), and thus he is inadmissible under 8 U.S.C. § 1182(a)(6) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."). Nevin Decl. ¶ 9; Ex. D. Therefore, Petitioner is properly detained pursuant to § 1225(b)(2)(A), which mandates that he "shall be" detained during his pending removal proceedings.

This reasoning is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As explained in *Jennings*, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to specific categories of aliens arriving in the United States, such as those who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2)(A)—the provision relevant here—is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)."

Jennings, 583 U.S. at 287. And § 1225(b)(2)(A) mandates detention. *Id.* at 297; *see* 8 U.S.C. § 1225(b)(2)(A). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[§ 1225](b)(2) mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

By his own admission Petitioner entered the U.S. illegally in October 2002. Nevin ¶ 6. He not encountered by DHS at that time, and thus he was not admitted or paroled, nor inspected by in immigration officer. *Id.* ¶ 3. Petitioner applied for an immigration benefit years after his illegal entry, and in connection with that application, he was placed into removal proceedings, which were subsequently dismissed on grounds of prosecutorial discretion. *Id.* ¶ 4, 7. Thus, Petitioner was never detained by DHS, and thus was never released on his own recognizance or parole prior to ICE's encounter with Petitioner on December 26, 2025.

On December 26, 2025, ICE encountered and arrested Petitioner. Nevin Decl. ¶ 8; Ex. B; Ex. C. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, his detention is mandatory pursuant to § 1225(b)(2)(A). *See Yajure Hurtado*, 29 I. & N. Dec. at 220 (aliens who entered without admission are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they "have been residing in the United States for years without lawful status").[3]

The reference in § 1225(b)(2)(A) to aliens "seeking admission" does not narrow its scope. The text and structure of the statute indicate that an alien who is an "applicant for admission" is

---

[3] BIA decisions are binding on ICE. *See* 8 C.F.R. § 1003.1(g) ("Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

generally one who is "seeking admission." *See* 8 U.S.C. § 1225(a)(1); *see* Applicant, Black's Law Dictionary (12th ed. 2024) ("Someone who requests something"); *see also Chen v. Almodovar*, 25 Civ. 9670 (JPC), 2026 WL 100761, at *9 (S.D.N.Y. Jan. 14, 2026) ("Section 1225 itself expressly treats applicants for admission as among those seeking admission[.]"); *cf. Jennings*, 583 U.S. at 303 ("[T]here is no 'canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.'" (quoting *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013))).

In a pair of recent decisions considering this same issue, Judge Vyskocil and Judge Cronan each concluded that § 1225(b)(2) applied when the factual record made clear that the petitioner entered the country unlawfully and was not admitted or paroled after inspection, and thus was an "applicant for admission" under the applicable statutory framework. *Chen*, 2026 WL 100761, at *13; *Chen v. Almodovar*, 25 Civ. 8350 (MKV), 2025 WL 3484855, at *4 (S.D.N.Y. Dec. 4, 2025). Accordingly, "under the plain language of Section 1225(b)(2)" the petitioners in those cases were "subject to mandatory detention pending the resolution of his removal proceedings." *Chen*, 2025 WL 3484855, at *4; *see also Chen*, 2026 WL 100761, at *14. Moreover, "[t]his conclusion holds true even when [a petitioner] was initially detained – shortly after crossing the border – and released on his own recognizance, purportedly under Section 1226." *Chen*, 2026 WL 100761, at *14. Indeed, there is no "basis in the INA for the proposition that 'if an alien is released pursuant to Section 1226, any rearrest must also be made pursuant to Section 1226 with any attendant protections under that provision." *Id.* (quoting *Chen*, 2025 WL 3484855, at *8) (internal quotations omitted). So too here. Because Petitioner entered the country unlawfully and has not been admitted, he is an "applicant for admission" subject to Section 1225(b)(2)(A)'s mandatory detention, regardless of prior proceedings dismissing removal proceedings on grounds of

prosecutorial discretion in April 2023 (during which he was never detained). 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

To be sure, a majority of courts to have considered the issue, including most in this district, have endorsed Petitioner's argument about the applicability of § 1225(b)(2)(A) in similar circumstances. *See, e.g.*, *Quispe-Sulcaray v. Noem*, No. 25 Civ. 9908 (VEC), 2025 WL 3501207 (S.D.N.Y. Dec. 7, 2025) (granting habeas petition based on conclusion that petitioner's detention was pursuant to § 1226(a) rather than § 1225(b)); *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) (same); *Guzman Andujar v. Francis*, No. 25 Civ. 9199 (JLR), 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025) (same); *Guzman Cardenas v. Almodovar*, No. 25 Civ. 9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) (same); *Comes v. DeLeon*, No. 25 Civ. 9283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) (same); *Rueda Torres v. Francis*, No. 25 Civ. 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) (same); *Ortiz-Lopez v. Francis*, 25 Civ. 7985 (KPF), ECF No. 14 (S.D.N.Y. Nov. 6, 2025) (same); *Tumba Huamani v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (same); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) (same); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (same); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same); *Lopez Benitez v. Francis*, No. 25. Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same). Such decisions have essentially reasoned that "Section 1225(b)(2) simply does not apply to any alien who is 'already in the country.'" *Chen*, 2025 WL 3484855, at *4 (quoting *Lopez Benitez*, 2025 WL 2371588, at *4).

The Government respectfully submits that those cases were wrongly decided. As Judge Vyskocil correctly observed, those decisions "ignore the plain text of Section 1225(a), which

unambiguously defines the term 'applicant for admission' used in Section 1225(b)(2), to include an 'alien *present in the United States* who has not been admitted.'" *Id.* (quoting 8 U.S.C. § 1225(a)). The Government respectfully submits that this Court should follow the reasoning of Judge Vyskocil, Judge Cronan, and other courts around the country who have correctly rejected the argument that § 1226(a)—and not § 1225(b)—applies in this context. *See, e.g., id.; Ferreira Candido v. Bondi*, No. 25 Civ. 867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Sandoval v. Acuna*, No. 25 Civ. 1467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025); *Rojas*, 2025 WL 3033967, at *7-8; *Mejia Olalde v. Noem*, No. 25 Civ. 168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 25 Civ. 526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *see also Alonzo v. Noem*, No. 25 Civ. 1519, 2025 WL 3208284, at *2-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 25 Civ. 9785, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025); *Chavez v. Noem*, No. 25 Civ. 2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (same).[4]

In short, Petitioner is lawfully detained pursuant to § 1225(b)(2)(A), and he therefore is not entitled to a bond hearing. Because applicants for admission have not been admitted to the United States, their due process rights are limited to the "procedure authorized by Congress." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Here, the procedure authorized by Congress in § 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

[4] There are now several appeals concerning this issue pending at the Second Circuit. *See, e.g., Barbosa Da Cunha v. Freden*, No. 25-CV-6532-MAV, 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025), *appeal filed*, *Barbosa Da Cunha v. Moniz*, No. 25-3141 (2d Cir.) (government opening brief filed Jan. 16, 2026).

about bond hearings."). Instead, for 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). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections. *See* 8 U.S.C. § 1229a. And 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 300; 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) (providing guidance regarding where parole may be appropriate). "That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Jennings*, 583 U.S. at 300.

Reading § 1225(b)(2)(A) to mandate detention for any "applicant for admission" is in accordance with the plain meaning of the text as enacted by Congress in IIRIRA. *See Chen*, 2026 WL 100761, at *9 ("fairest reading" of Section 1225(b)(2)(A) requires mandatory detention of applicants for admission who "never gained lawful entry after inspection and authorization by an immigration officer, regardless of how long they have been present."); *Chen*, 2025 WL 3484855, at *4 ("[U]nder the plain language of Section 1225(b)(2), Petitioner is subject to mandatory detention pending the resolution of his removal proceedings."); *Vargas Lopez*, 2025 WL 2780351, at *9 (denying habeas petition and holding that petitioner was "an alien within the 'catchall' scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a"). This reading does not render § 1226 superfluous, as that provision continues to apply, for example, to aliens who have been convicted of certain criminal offenses

since admission. *See Chavez*, 2025 WL 2730228, at *5 (observing that "[h]eeding the plain language of the statute . . . does not contradict or render superfluous § 1226, as Petitioners urge," and explaining that "§ 1226 'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission'" (quoting *Jennings*, 583 U.S. at 288) (emphasis omitted)). And it maintains the dichotomy prescribed by Congress in IIRIRA by distinguishing between those who effectuate a lawful entry (even if later found removable) and are subject to § 1226, and those who illegally entered and are statutorily deemed to be applicants for admission subject to § 1225.

Thus, Petitioner's claims asserting a violation of the INA and related bond regulations fail.

A. *Bautista v. Santacruz*

On November 25, 2025, a district court in the Central District of California granted a motion certifying a class (the "Bond Eligible Class") that is defined as follows: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Bautista v. Santacruz*, No. 25 Civ. 1873 (SSS) (BFM), 2025 WL 3288043, at *9 (C.D. Cal. Nov. 25, 2025). Prior to class certification, the court partially granted the petitioners' motion for summary judgment, declaring the government's position that the petitioners were subject to detention under Section 1225 unlawful. *Bautista v. Santacruz*, No. 25 Civ. 1873 (SSS) (BFM), 2025 3289861, at *9, *11 (C.D. Cal. Nov. 20, 2025). On December 18, 2025, the *Bautista* court entered a partial final judgment under Fed. R. Civ. P. 54(b) in favor of petitioners and members of the Bond Eligible Class, which declared, *inter alia*, that "the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not

subject to mandatory detention under § 1225(b)(2)"; and pursuant to 8 C.F.R. §§ 236.1, 12361.1 and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and if not released, a custody redetermination hearing before an immigration judge." Final Judgment, *Bautista v. Noem*, No. 25 Civ. 1873 (SSS) (BFM) (C.D. Cal. Dec. 18, 2025) (ECF No. 94). Petitioner asserts that he is class member. Pet. ¶ 5.

The government disagrees with the merits of the *Bautista* court's summary judgment rulings, and contends that the district court lacked jurisdiction to enter class-wide declaratory relief in habeas context because "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam). Accordingly, on December 18, 2025, the government immediately filed a notice of appeal from the judgment in the Ninth Circuit. *See* Notice of Appeal, *Bautista v. Noem*, No. 25 Civ. 1873 (SSS) (BFM) (C.D. Cal. Dec. 18, 2025) (ECF No. 95). The government is presently assessing whether and how *Bautista* impacts this case and thus takes no position on Petitioner's assertion of class membership.

II. Petitioner's Detention Comports with Due Process

In *Savane*, this Court ruled that even assuming that § 1225 applies, the petitioner's due process rights were violated because ICE did not afford the petitioner any process at all before re-detaining him. 801 F. Supp. 3d at 491. However, *Savane* is distinguishable. There, the petitioner had been detained by DHS and released on an order of recognizance. *Id.* While DHS maintained that the release of the petitioner on his own recognizance under § 1226 was a mistake, the petitioner was "as a factual matter released from custody." *Id.* Therefore, despite DHS's initial mistaken invocation of § 1226 to justify the petitioner's release, the Court in *Savane* treated the petitioner's initial release as parole under § 1182(d)(5)(A) (the provision under which DHS could have granted

parole to the petitioner). *Savane*, 801 F. Supp. 3d at 491. The Court then held that the ICE's revocation of the petitioner's parole without any process violated due process. *Id.* The Court concluded that ICE violated due process because it did not comply with the statutorily required process for revoking parole. *Id.* at 492. The Court stated that such process required written notice prior to revocation and an explanation for why or how ICE revoked parole. *Id.* 492-93. Here, Petitioner was never detained by DHS and thus never released on his own recognizance nor parole. Accordingly, *Savane* is not controlling here.

As discussed above, because Petitioner is "[a]n alien present in the United States who has not been admitted," he is deemed an "applicant for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission like Petitioner are "'treated' for due process purposes 'as if stopped at the border,'" even if they are "paroled elsewhere in the country for years pending removal." *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *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."). Therefore, Petitioner is not permitted release under Section 1226(a), but rather is lawfully detained pursuant to Section 1225(b)(2)(A), and neither his procedural due process rights nor any substantive due process rights have been violated.

First, with respect to Petitioner's 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. 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 207-09. 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 as far as an alien denied entry is concerned." *Id.* (quoting *Knauff*, 338 U.S. at 544). In *Thuraissigiam*, the Supreme Court recently reiterated that arriving aliens, even if "paroled elsewhere in the country for years pending removal, are "'treated' for due process purposes 'as if stopped at the border.'" 591 U.S. at 139 (quoting *Mezei*, 345 U.S. at 215).

Indeed, as Judge Sullivan recognized in a case decided after *Jennings* involving an applicant for admission, "because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018). This Court has held the same. *See Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process

rights for alien deemed at threshold of entry extended no further than the process outlined by statute).[5]

Moreover, more than a century of Supreme Court precedent confirms that applicants for admission are treated differently under the law for due process purposes from other categories of detained aliens. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In the relevant provisions of the INA, Congress has decided to treat applicants for admission differently: while their admission to the United States is being considered, the statute mandates their detention during removal proceedings. Unlike admitted aliens later placed in removal proceedings and detained under § 1226, applicants for admission are "request[ing] a privilege," *Landon*, 459 U.S. at 32, and therefore "stand[ ] on a different footing" for constitutional purposes, *Mezei*, 345 U.S. at 212. Their lack of entitlement to additional process, including 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 any 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)).

---

[5] Other decisions, including from other judges in this district, have disagreed with this interpretation. *See, e.g.*, *Al-Thuraya v. Warden*, No. 25 Civ. 2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (collecting cases).

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 300, Petitioner is not entitled to further process at this time, *see Mezei*, 345 U.S. at 212.

The Government is aware that another judge in this district has held that noncitizens subject to mandatory detention under § 1225(b) have a constitutional right to a bond hearing under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024)—even though *Black* itself involved individuals detained under § 1226(c), which provides for mandatory detention of aliens who are removable because of "prior conviction on specified criminal grounds or on allegations of involvement with terrorism." *See Al-Thuraya v. Warden*, No. 25 Civ. 2582 (AS), 2025 WL 2858422, at *2 (S.D.N.Y. Oct. 9, 2025). The Government respectfully disagrees with that decision and this Court should not follow it. As explained above, individuals detained under § 1225(b)—as opposed to those detained under § 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." 2025 WL 2858422, at *4. But in *Mezei*, the Supreme Court upheld Mezei's detention without a hearing and reversed the district court's order that he be released on bond. 345 U.S. at 207-08. It was in this context that the Supreme Court explained that "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Mezei*, 345 U.S. at 212. The entry fiction is not limited to "the political branches' authority to legally admit or exclude noncitizens," *Al-Thuraya*, 2025 WL 2858422, at *4, but instead "runs throughout immigration

law," *Zadvydas*, 533 U.S. at 693 (discussing *Mezei* and noting that the "indefinite detention" of the petitioner on Ellis Island "did not count as entry into the United States" and instead he was "'treated,' for constitutional purposes, 'as if stopped at the border'"). The Government respectfully submits that *Al-Thuraya* did not fully account for this fact.

Petitioner's due process claim should therefore be denied.

III. Petitioner's Claim under the APA Fails

The petitioner does not set forth an APA claim, but merely requested relief under the APA in the Prayer for Relief. Pet. (Prayer for Relief). Any such claim must be dismissed under Fed. R. Civ. P. 12(b)(6), because the petition does not assert a basis for it. *Aschcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face"). A complaint does not suffice if it "tenders naked assertions devoid of further factual enhancement." *Id.* at 678 (citations and quotation marks omitted). If the Court construes the petition to properly assert an APA claim, it still must be dismissed. For an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and thus *must be brought in habeas*." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—and it is simply not cognizable under the APA. Petitioner's challenge to detention premised on the APA, then, must fail.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 ("[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review"). Petitioner has identified

alternative avenues for remedy via a habeas petition. Accordingly, to the extent the petition assets an APA claim, it should be denied.

IV. Petitioner's *Accardi* Doctrine Claim Fails[6]

Similarly, Petitioner did not assert an *Accardi* Doctrine claim, but requested relief under *Accardi*. The Petition is completely silent as to the basis for the requested relief. Accordingly, the purported *Accardi* claims must also be dismissed for failure to state a claim. *Iqbal*, 566 U.S. at 678. But to the extent this Court is inclined to address any claim construed as being adequately raised under *Accardi*, it should likewise be dismissed. Regardless of how DHS initially treated applicants for admission, in the intervening BIA decision in *Matter of Hurtado*—a decision binding on ICE—aliens who entered without admission are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they "have been residing in the United States for years without lawful status." *See Yajure Hurtado*, 29 I. & N. Dec. at 220. Agencies may change their interpretations of statutes, provided that they offer a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "is not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation"). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, provides a detailed analysis of the INA's statutory framework and explains why a detention like Petitioner's is governed by § 1225(b)(2)(A).

---

[6] Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 261 (1954), federal agencies are required to follow their own regulations and some formally adopted procedures, including those that govern the exercise of an agency's discretion.

V. Should the Court Determine That Petitioner Is Detained Pursuant to Section 1226(a), Petitioner May Challenge His Detention Through a Bond Hearing

If the Court nevertheless determines that Petitioner's detention is governed by § 1226(a), then Petitioner would be entitled to a bond hearing in immigration court for a determination of whether he presents a danger to others or a flight risk. In that event, Petitioner should be required to exhaust his challenges to his detention in immigration court before this Court orders outright release. *See, e.g.*, *Perez v. Francis*, No. 25 Civ. 8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (in similar case, holding that "the petitioner should first exhaust his remedies through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition"); *see also Sun v. Almodovar*, No. 25 Civ. 9262 (PKC), 2025 WL 3241268, at *3 (S.D.N.Y. Nov. 20, 2025) ("Because petitioner Enbin Sun is being detained pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a).").

Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). As noted, DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Guzman Chavez*, 594 U.S. at 527 (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). If DHS decides to release the alien, it may set

a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).[7] If DHS decides to release an alien, "at any time" it may "revoke" such release, "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

An alien detained pursuant to § 1226(a) may request a post-deprivation custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors and a determination of whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Thus, if the Court determines that Petitioner's detention does not fall within the scope of § 1225(b)(2)(A), ICE nevertheless has authority to detain Petitioner pursuant to § 1226(a), and Petitioner may then obtain a bond hearing before an Immigration Judge for a determination as to whether he presents a danger to others or a risk of flight.[8] *See* 8 C.F.R. § 1003.19. Such a hearing would provide constitutionally sufficient process for Petitioner's continued detention. *See Velasco Lopez*, 978 F.3d at 855.

---

[7] In addition to bond, the Government may release an alien detainee on his own recognizance under § 1226(a)(2)(B), which is a form of conditional parole. *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS's conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)."); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [Government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

[8] To be clear, in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (2025), a ruling from this Court that Petitioner is detained under § 1226(a) would be required for him to request and receive the bond hearing.

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

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

CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus should be denied.

Dated: January 21, 2026
New York, New York

Respectfully submitted,

JAY CLAYTON
United States Attorney for the
Southern District of New York

By: * /s/ Leslie A. Ramirez-Fisher *
LESLIE A. RAMIREZ-FISHER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2785
leslie.ramirez-fisher@usdoj.gov

CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 8,646 words in this memorandum.