

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GHOLAM ALI AHMADI,

Petitioner,

- v -

JUDITH ALMODOVAR, in her official capacity
as Field Office Director of Enforcement and
Removal Operations, New York City, Immigration
and Customs Enforcement, *et al.*,

Respondents.

26 Civ. 274 (VSB)

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

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Respondents (the “Government”), by their attorney, Jay Clayton, United States Attorney for the Southern District of New York, respectfully submit this memorandum of law in opposition to the petition for a writ of habeas corpus, Dkt. No. 1 (“Pet.”), filed by petitioner Gholam Ali Ahmadi (“Petitioner”).

PRELIMINARY STATEMENT

Petitioner is a native and citizen of Afghanistan, and an applicant for admission to the United States. On or about April 15, 2023, Petitioner was encountered by U.S. Customs and Border Protection (“CBP”) at or near San Ysidro, California, after he entered the United States without inspection or admission by an immigration officer.

Because Petitioner is an alien who illegally entered the United States without inspection or admission and is deemed an inadmissible applicant for admission by statute, the United States Department of Homeland Security (“DHS”) had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a or issue an expedited removal order. DHS opted to place Petitioner in § 1229a removal proceedings. A few days after his apprehension, Petitioner was served with a Notice to Appear to commence those proceedings. On or about April 20, 2023, Petitioner was released on an Order of Release on Recognizance.

On January 13, 2026, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody following a scheduled appointment with ICE at 26 Federal Plaza in Manhattan and subsequently transferred him to a detention facility in Newark, New Jersey where he is held at present pending resolution of his removal proceedings.

Also on January 13, 2026, counsel for Petitioner filed the instant petition. Dkt. No. 1. In the petition, Petitioner asserts that his detention violates the Immigration and Nationality Act (“INA”), DHS bond regulations, Petitioner’s Fifth Amendment due process rights, and the Administrative Procedures Act because he is being detained without entitlement to a bond hearing.

The petition should be denied. Because Petitioner is an applicant seeking admission who is in removal proceedings, under precedent from the Board of Immigration Appeals, 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. To the extent the Court determines Petitioner is instead detained pursuant to INA § 236, 8 U.S.C. § 1226(a), as Petitioner asserts, Petitioner would then be entitled to request a bond hearing before an immigration judge, which would afford him sufficient process to contest his detention.

Accordingly, the Court should deny the petition.

BACKGROUND

A. 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). In the INA, Congress has enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically entered the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45-46 (2011) (“Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an ‘exclusion proceeding’ and an alien already here channeled to a ‘deportation proceeding.’” (citing *Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982))). “Entry” referred to “any coming of an alien into the United States,” and whether an alien had physically entered the United States (or not) “dictated

what type of [removal] proceeding applied.” *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2011) (citing 8 U.S.C. § 1101(a)(13) (1994)).

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 physical “entry” had

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

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 superseded that 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” with a focus on lawful “admission.” *Martinez*, 693 F.3d at 413 n.5. IIRIRA defines “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and *enter* the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully admitted*.” House Rep. at 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 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and it provides for expedited removal proceedings in certain circumstances. 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).

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).

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*, 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)).

B. Factual Background

Petitioner is a native and citizen of Afghanistan. Declaration of Supervisory Detention and Deportation Officer John Tucciarone (“Tucciarone Decl.”) ¶ 3. Petitioner entered the United States without inspection by an immigration officer at or near San Ysidro, California. Tucciarone Decl. ¶ 4; Ex. A² (Form I-200 Warrant for Arrest of Alien, dated April 20, 2023). A Border Patrol Officer with U.S. Customs and Border Protection (“CBP”) encountered Petitioner at or near San Ysidro, California, on or about April 15, 2023. Tucciarone Decl. ¶ 4. Petitioner admitted that he arrived in the United States at a time and place other than as designated by the Attorney General or the Secretary of Homeland Security by walking across the international boundary and entering illegally. *Id.*; Ex. B (Record of Deportable/Inadmissible Alien, Form I-213, dated April 20, 2023) at 3. CBP determined that Petitioner had entered the United States illegally without inspection or parole at a time and place other than as designated by the Attorney General and brought Petitioner to the Imperial Beach Border Patrol Station for processing. Tucciarone Decl. ¶ 4; Ex. B at 2. At the Imperial Beach Border Patrol Station, Petitioner admitted that “to being a citizen and national of Afghanistan without proper immigration documents allowing him to enter or remain in the United States legally.” Ex. B at 3.

² Unless otherwise noted, exhibits referenced as “Ex. ___” refer to the exhibits to the Return to Habeas Petition, filed herewith.

On or about April 20, 2023, Petitioner was released by the CBP due to lack of detention space and issued a Form I-862 Notice to Appear (“NTA”), charging him with removability under the Immigration and Nationality Act (“INA”) pursuant to § 212(a)(6)(A)(i), 8 U.S.C. 1182(a)(6)(A)(i), namely that he is an alien present in the United States without being admitted or paroled, who arrived in the United States at any time or place other than as designated by the Attorney General. Tucciarone Decl. ¶¶ 4–5; Ex. C (NTA). The NTA was filed with the Immigration Court, thereby commencing removal proceedings against Petitioner, and ordered Petitioner to appear before an immigration judge in Phoenix, Arizona on October 30, 2023. Ex. C; Tucciarone Decl. ¶ 4. Petitioner was also served with a Form I-220A Order of Release on Recognizance. Tucciarone Decl. ¶ 5; Ex. D.

On August 25, 2023, Petitioner filed a motion to change venue from the Phoenix Immigration Court to the New York Immigration Court. Tucciarone Decl. ¶ 6. Within the motion to change venue, Petitioner admitted to the allegations contained in the NTA and conceded the charge of removability. *Id.* On August 28, 2023, the Immigration Judge granted the motion to change venue to the New York Immigration Court and canceled the master calendar hearing scheduled for October 30, 2023. Tucciarone Decl. ¶ 7. On October 6, 2023, Petitioner filed an application for relief before the immigration court. Tucciarone Decl. ¶ 8. On May 23, 2024, the immigration court issued a scheduling order and an order cancelling Petitioner’s initial Master Calendar Hearing, indicating that the court will issue a new Notice of Hearing with a date to be determined. Tucciarone Decl. ¶ 9. On June 20, 2024, the immigration court issued a notice of hearing scheduling Petitioner’s Master Calendar Hearing for July 12, 2024. Tucciarone Decl. ¶ 10. On July 2, 2024, the immigration court canceled the Master Calendar Hearing, indicating that the court will issue a new Notice of Hearing with a date to be determined. Tucciarone Decl. ¶ 11. On

October 10, 2024, Petitioner, through his counsel, submitted written pleadings admitting to the charges contained in the NTA and conceding removability. Tucciarone Decl. ¶ 12. On March 5, 2025, the immigration court scheduled an individual hearing for March 30, 2027. Tucciarone Decl. ¶ 13. Petitioner’s removal proceedings remain pending. *Id.* On December 19, 2025, Petitioner was sent a Form G-56 letter notifying him to report to ICE on January 13, 2026. Tucciarone Decl. ¶ 14.

On January 13, 2026, Petitioner was arrested by ICE at 26 Federal Plaza during a check-in. Tucciarone Decl. ¶ 15; Ex. E (Warrant for Arrest of Alien, Form I-200, dated Jan. 13, 2026); *see also* Ex. F (Record of Deportable/Inadmissible Alien, Form I-213, dated Jan. 13, 2026). Later that same day, and following arrest processing, he was transferred to Delaney Hall Detention Facility in Newark, New Jersey. Tucciarone Decl. ¶ 16.

C. Procedural History

On January 13, 2026, Petitioner filed the petition. Dkt. No. 1. Following an initial conference on January 15, 2026, the Court ordered the Government to respond to the petition by January 20, 2026. Dkt. No. 6.

In the petition, Petitioner asserts that his detention without a bond hearing violates the INA because “[w]hen Respondents seize and detain a noncitizen whom Respondents have previously seized within the United States and then released from an initial period of detention, Respondents are required by 8 U.S.C. § 1226 to make an individualized determination as to the noncitizen’s risk of flight and danger to the community.” Pet. ¶¶ 44, 49. He asserts that he can only be appropriately detained under 8 U.S.C. § 1226(a), which entitles him to a bond hearing. *See* Pet. ¶¶ 49–51. Petitioner further asserts that Respondents’ failure to provide a bond hearing violates 8 C.F.R. §§1003.19(a) and 1236.1(d). *Id.* ¶ 40; *see id.* ¶¶ 49, 50. He also asserts that his detention violates his due process rights under the Fifth Amendment, *id.* ¶¶ 52–58, as well as the

Administrative Procedure Act. *Id.* ¶¶ 59–71. Petitioner requests, among other things, that the Court enjoin the Government from transferring him out of New York while this petition is pending³, and issue a writ of habeas corpus requiring ICE to release him from custody or, alternatively, provide him with a bond hearing pursuant to § 1226(a). Pet., Prayer for Relief.

ARGUMENT

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 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

³ On January 13, 2026, the Court issued an Order to Show Cause, stating in part that “Petitioner shall not be transferred except to a facility within this District, the Eastern District of New York, or the District of New Jersey absent further order of this court” ECF No. 3 at 1.

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.”). Tucciarone Decl. ¶ 4; Ex. C. 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 comports with Supreme Court precedent. 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 v. Rodriguez*, 583 U.S. 281, 287 (2018). 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.”).

Petitioner argues that § 1226(a), rather than § 1225(b)(2)(A), applies—along with related DHS regulations—and that he is therefore entitled to a bond hearing while in detention. Pet. ¶¶ 43–51. Petitioner points to the April 2023 Form I-220A, which released Petitioner on his own recognizance under § 1226, to contend that any re-arrest must also be made in accordance with § 1226. *Id.* ¶ 28; 43–51. According to Petitioner, “[w]hen Respondents seize and detain a noncitizen whom Respondents have previously seized within the United States and then released from an initial period of detention,” § 1226 requires “an individualized determination as to the noncitizen’s risk of flight and danger to the community.” *Id.* ¶ 44. However, after IIRIRA, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry.’” *Thuraissigiam*, 591 U.S. at 140. Such applicants for admission are not permitted release under § 1226(a), but rather are subject to mandatory detention under § 1225(b)(2)(A).

Here, Petitioner was detained shortly after his unlawful entry in April 2023. Tucciarone Decl. ¶ 4; Ex. B at 3. Thus, he “cannot be said to have ‘effected an entry,’” *Thuraissigiam*, 591 U.S. at 140, and is therefore deemed an applicant for admission. 8 U.S.C. § 1225(a)(1). Although Petitioner was released on his own recognizance a few days later, Tucciarone Decl. ¶ 5; Ex. D, his status as an applicant for admission has remained unchanged. On January 13, 2026, Petitioner’s release was revoked and ICE again arrested him. Tucciarone Decl. ¶ 15; Ex. F; Ex. G. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, he was re-arrested and 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”).⁴

Nor does the reference in § 1225(b)(2)(A) to aliens “seeking admission” narrow its scope. The text and structure of the statute indicate that an alien who is an “applicant for admission” is 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 and with materially indistinguishable facts from this Petition, 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

⁴ 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.”).

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 Petitioner’s initial release on his own recognizance in April 2023. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A); Ex. D.

To be sure, a number of courts, including many 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 Tucciarone 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); *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) (rejecting petitioner’s assertion that he was detained pursuant to § 1226(a) rather than § 1225(b)(2)); *Sandoval v. Acuna*, No. 25 Civ. 1467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (same); *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) (same); *Vargas Lopez v. Trump*, No. 25 Civ. 526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (same); *see also Alonzo v. Noem*, No. 25 Civ. 1519, 2025 WL 3208284, at *2-5 (E.D. Cal. Nov. 17, 2025) (discussing interplay between §§ 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to Section 1226(a)); *Altamirano Ramos v. Lyons*, No. 25 Civ. 9785, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025) (same); *Chavez v. Noem*, No. 25 Civ. 2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (same).

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 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.

II. Petitioner’s Detention Comports with Due Process

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), 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).

As a court in this district 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). Another court in this district 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). Other courts have agreed. *See, e.g., Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 533-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20 Civ. 159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) (“Applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens’ procedural due process rights entitle them only to the relief provided by the INA.”); *Salim v. Tryon*, No. 13 Civ. 6659, 2014 WL 1664413 (JTC), at *2 (W.D.N.Y. Apr. 25, 2014) (“The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings.”).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

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).

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)); see *Demore*, 538 U.S. at 523 n.7 (“[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings “‘would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

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. To the extent Petitioner argues that his detention under § 1225 violates his due process rights because DHS initially detained him under § 1226, that argument fails because of the intervening BIA decision in *Matter of Hurtado*—a decision binding on ICE that was issued only recently, several years after Petitioner’s initial arrest. 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).

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 submits that the Court should not apply that reasoning here. 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.⁶

Petitioner’s due process claim should therefore be denied.

III. Petitioner’s Claim under the APA Fails

Petitioner cannot sustain a claim under the APA because the APA is not the proper vehicle to challenge the validity of one’s detention. The Supreme Court recently held that, 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,

⁶ Additionally, at least one judge in this district addressing a similarly situated petitioner has determined that, even if § 1225 governs, the petitioner’s due process rights were violated because the petitioner was not provided adequate notice of any decision to revoke his parole. *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452, at *8-10 (S.D.N.Y. Sept. 28, 2025). The Government respectfully disagrees with that court’s decision.

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”); *see also J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring) (“[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ . . . habeas corpus, not the APA, is the proper vehicle here.”). Here, Petitioner has identified alternative avenues for remedy via a habeas petition. Accordingly, Petitioner’s APA claim, Pet. ¶¶ 59–71 (Third and Fourth Cause of Action), should be denied.

IV. 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 current 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

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).

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, to the extent the Court determines that Petitioner’s current 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.

To the extent the Court determines that Petitioner is detained pursuant to § 1226(a), Petitioner should be required to exhaust his administrative remedies through a bond hearing before obtaining relief from a federal court, as Petitioner appears to recognize. *See* Pet. ¶¶ 17–21. 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).

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.

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.

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New York, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c) and Rule 4.B of the Individual Rules and Practices in Civil Cases of Judge Vernon S. Broderick, the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules and the page limitations of Judge Broderick's Individual Rules and Practices in Civil Cases. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 8,742 words in this memorandum.

/s/ Jonaki Singh

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