

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JULIAN ALCON GASPAR,

Petitioner,

v.

Civil Action No.
9:26-cv-00118 (BKS)

FREDERICK J. AKSHAR II, in his official capacity as Warden of the Broome County Correctional Facility; PAMELA BONDI, in her official capacity as U.S. Attorney General; PHILIP RHONEY, in his official capacity as Deputy Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement; TAMMY MARICH, in her official capacity as Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her official capacity as Secretary of Homeland Security,

Respondents.

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITION
FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. 2241 AND IN RESPONSE TO
COURT'S ORDER TO SHOW CAUSE**

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Preliminary Statement

Petitioner Julian Alcon Gaspar (“Petitioner”) is a Guatemalan national who entered the United States without inspection and has not been admitted to the United States. He is currently detained at the Broome County Correctional Facility, pursuant to 8 U.S.C. § 1225(b)(2)(A). Petitioner challenges the decision of the Department of Homeland Security (“DHS”) to detain him pursuant to that statute (8 U.S.C. § 1225(b)(2)(A)), rather than pursuant to 8 U.S.C. § 1226(a). The practical difference between the two statutory sections is—in the main—that noncitizens detained under § 1226(a) are eligible for a bond hearing at the discretion of DHS, but noncitizens detained under § 1225(b)(2)(A) may not be released on bond. Petitioner asserts that his detention is unlawful, as any authority to detain him flows from § 1226(a), and so if he is not immediately released, he should be provided a bond hearing under § 1226(a) within a certain number of days.¹

Petitioner’s habeas petition should be denied because the plain text of § 1225(b)(2)(A), particularly in context of the Immigration and Nationality Act’s (“INA”) full statutory scheme, leads to the conclusion that Petitioner is subject to mandatory detention pursuant to § 1225(b)(2)(A). Under § 1225(b)(2)(A), aliens who enter the United States without inspection remain “applicants for admission” and must be detained pending removal proceedings unless such aliens clearly and beyond a doubt are entitled to admission. It is undisputed that Petitioner entered without inspection and has never been admitted. Those facts, along with the plain language of

¹ The Petition is inconsistent as to the period in which he seeks a bond hearing, variably asking for one within 7 days or 14 days. *Compare* Dkt. 1 ¶ 5 (asking for bond hearing “within seven days”), *with id.*, Prayer for Relief ¶ 10 (asking for bond hearing “within 14 days”). Regardless, should the Court order a bond hearing, the Court should further require that the burden of proof to show that Petitioner is neither a flight risk nor a danger to the community be allocated to Petitioner—not the Government. *See, e.g., Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *7 (W.D.N.Y. Jan. 15, 2026) (“[T]he Court finds no due process violation in Petitioners’ bearing the burden at their respective initial bond hearings to demonstrate to the satisfaction of the Immigration Judge that they are neither dangers to the community nor flight risks.”).

§ 1225(b)(2)(A), foreclose Petitioner's argument that only § 1226(a) may authorize his detention.

Contrary to Petitioner's arguments, his prior approval for Special Immigrant Juvenile classification ("SIJC") and the discretionary privilege of deferred action do not alter the result. SIJC does not provide any lawful status, prohibit detention, or bar effectuation of a removal order. Likewise, deferred action "does not provide lawful status," does not bar removal from the United States, and can be terminated at the discretion of USCIS at any time. *See* Declaration of Emer M. Stack ("Stack Decl."), Ex. A.; *see also USCIS to Offer Deferred Action for Special Immigrant Juveniles* (March 7, 2022), <https://www.uscis.gov/archive/uscis-to-offer-deferred-action-for-special-immigrant-juveniles>.

For these reasons, and as set forth more fully below, the Petition should be denied.

Background

I. Statutory and Regulatory Background

The Immigration and Nationality Act ("INA"), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), establishes the comprehensive framework governing how noncitizens who unlawfully enter the United States are detained and ultimately removed from the United States. The detention and removal procedures that govern—including whether detention is mandatory or discretionary, and whether a bond hearing is available to the noncitizen—depends on the type of noncitizen involved in a particular case. The INA categorizes and distinguishes noncitizens based on several factors, including where a noncitizen encountered immigration officials, whether a noncitizen engaged in certain conduct, and whether a determination has been made as to the likelihood of a noncitizen's entitlement to admission. Where, as here, one such category of noncitizens—"applicants for admission"—is involved, the plain text of the relevant statute (8 U.S.C. § 1225(b)(2)), especially

considering changes to the statutory scheme brought about in 1996, confirms that detention is mandatory and a bond hearing is unavailable. That statutory scheme, alongside relevant legislative history, is summarized below.

A. The pre-IIRIRA framework gave preferential treatment to aliens who unlawfully entered and remained in the United States.

Before the 1996 IIRIRA amendments to the INA, the INA treated aliens differently based on whether the alien presented a port of entry, or whether the alien entered the United States without inspection. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–24 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251(a) (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099–1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States.” 8 U.S.C. § 1101(a)(13) (1994). 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*, 602 F.3d at 1099.²

At that time, the INA “provided for two types of removal proceedings: deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. §§ 1225(a)-(b) (1995), 1226(a) (1995). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I. & N. Dec. at 223, *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I.

² Aliens who arrive at a port of entry have physically “entered” the United States, but under the longstanding “entry fiction” doctrine, “aliens who arrive at ports of entry are ‘treated’ for due process purposes as if stopped at the border.” *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

& 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.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see Hing Sum*, 602 F.3d at 1100 (similar), H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") (observing that "illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

B. Through IIRIRA, Congress eliminated the preferential treatment for aliens who unlawfully entered and mandated detention of all "applicants for admission."

Congress discarded that prior regime through the 1996 enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA added § 1225 to ensure "that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and made lawful "admission" the touchstone. IIRIRA defined "admission" (and "admitted") 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 Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several statutory provisions codified in § 1225 of Title 8, discussed below.

Section 1225(a): Applicants for Admission.

Section 1225(a) codifies Congress’s decision to make lawful “admission”—rather than physical entry—the benchmark. Section § 1225(a) defines “applicants for admission” as “alien[s] *present* in the United States who [have] not been admitted,” or who “arrive[] in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” 8 U.S.C. § 1225(a). Moreover, “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” *Id.* § 1225(a)(3). The inspection by an immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to immigration proceedings.

Section 1225(b): Removal Proceedings with Mandatory Detention.

IIRIRA also provided for expedited removal and non-expedited “Section 240” proceedings and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. § 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020), which may be applied to a subset of certain aliens:

those who (1) are “arriving in the United States,” or (2) have “not been admitted or paroled into the United and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. §1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear of persecution and, if found not to have such fear, until removed.” *Id.* §1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. §235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added).³ For such aliens, § 1225(b)(2)(A) requires detention pending Section 240 removal proceedings:

Subject to Subparagraphs B and C in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring § 1225(b)(2)’s detention mandate); *Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2)

³ Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* §1225(b)(2)(C).

“mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”); *Chen*, 2025 WL 3484855, at *3 (detention under § 1225(b)(2)(A) is “mandatory”). In this way, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for noncitizens who are applicants for admission, but who do not fall within either of the two categories described in § 1225(b)(1) (i.e., arriving aliens and other aliens subject to expedited removal). During removal proceedings under 8 U.S.C. § 1229a, an alien may seek relief from removal, including asylum.

In sum, § 1225(b)(1) and (2) “unequivocally mandate that aliens falling within their scope ‘shall’ be detained.” *Jennings*, 583 U.S. at 300. And such “detention must continue until immigration officers have finished ‘consider[ing]’ the application for asylum . . . or until removal proceedings have concluded.” *Id.* at 299.

Sections 1225(b)(1) and (2) contain no provision for a bond hearing. *See Jennings*, 583 U.S. at 297 (observing that under the “clear language” of § 1225(b), “neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”). Although § 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “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.” *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary 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 other words, when an alien is granted this discretionary parole, the parolee remains an applicant for admission. 8 U.S.C. § 1182(d)(5)(A)

(“[P]arole of such alien shall not be regarded as an admission of the alien.”); *accord* 8 U.S.C. § 1101(a)(13)(B); 8 C.F.R. § 1.2. This “express exception to detention” found in discretionary parole “implies that there are no other circumstances under which aliens detained under § 1225(b) may be released,” including on bond. *Jennings*, 583 U.S. at 300 (emphasis omitted).

Section 1226: Removal Proceedings with Discretionary Detention.

IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (not “applicants for admission” specifically). *See* 8 U.S.C. § 1226. Whereas § 1225 applies to applicants for admission, § 1226 governs the detention of aliens who were admitted but later became deportable and are subject to removal proceedings under § 1229a—for example, admitted aliens who overstay or otherwise violate the terms of visa, and others who are *not* applicants for admission.

Under § 1226(a), “[o]n a warrant issued by the Attorney General, 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). Detention under this provision is generally discretionary. The arrested alien “may” either “continue to [be] detain[ed],” or “may” be released on bond or conditional parole.⁴ *Id.* DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge’s custody determination to the Board of Immigration Appeals (“BIA”). 8 C.F.R. §§ 236.1(c)(8), (d), 1003.19, 1236.1(d)(1).

That “default rule” of discretionary detention under § 1226(a) does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Under § 1226(c), the Attorney

⁴ Conditional parole under § 1226(a) is distinct from parole under § 1182(d)(5)(A). *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023); *see Ortega-Cervantes U. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

General “shall take into custody” certain classes of criminal aliens: those who are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227, or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1); *see Nielsen v. Preap*, 586 U.S. 392, 398–99 (2019). As with mandatory detention under § 1225(b), mandatory detention under § 1226(c) does not provide for bond hearings. *See Black v. Decker*, 103 F.4th 133, 142 (2d Cir. 2024) (“[T]he government may detain noncitizens under section 1226(c) without an initial bond determination.”); *accord Jennings*, 583 U.S. at 303–06. Such aliens may be released only if DHS determines “that release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or a similar person, and then only if the alien “will not pose a danger” to public safety and is not a flight risk. 8 U.S.C. § 1226(c)(4). By expressly stating that the covered aliens may be released ‘only if’ certain conditions are met, the statute expressly and unequivocally imposes an affirmative *prohibition* on releasing detained aliens under any other conditions,” including bond. *Jennings*, 583 U.S. at 304 (internal citation omitted).

Congress recently amended § 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), which additionally requires detention of aliens who (1) are inadmissible because they are physically present in the United States without admission or parole (8 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack required documentation, (*id.* § 1182(a)(7)); and (2) are “charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. *Id.* § 1226(c)(1)(E).

Statutory Summary.

To summarize the detention and removal proceedings that flow from the different statutory detention authorities summarized above, the Government cites the following table from the court’s

decision in *Yinxiao Chen v. Almodovar*, No. 25 CIV. 9670 (JPC), 2026 WL 100761, at *4 (S.D.N.Y.

Jan. 14, 2026):

Statutory Provision	Covered Noncitizen	Removal Proceedings	Detention
8 U.S.C. § 1225(b)(1)(A)(i)	“[A]n alien” who “is arriving in the United States” and that an immigration officer determines is inadmissible for misrepresentation or lack of documentation	Expedited	Mandatory; no bond but potential parole
8 U.S.C. § 1225(b)(1)(A)(iii)	“An alien” who “has not been admitted or paroled into the United States,” who has not shown continuous physical presence for two years, who has been designated by the Attorney General, and whom an immigration officer determines is inadmissible for misrepresentation or lack of documentation	Expedited	Mandatory; no bond but potential parole
8 U.S.C. § 1225(b)(2)(A)	“[A]n alien”—other than crewmen, stowaways, and those covered by Section 1225(b)(1)—“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”	Full	Mandatory; no bond but potential parole
8 U.S.C. § 1226(a)	“[A]n alien” arrested “[o]n a warrant issued by the Attorney General”	Full	Discretionary, with potential bond
8 U.S.C. § 1226(c)	“[A]ny alien” with a disqualifying criminal history	Full	Mandatory; no bond but potential witness protection release

C. The plain language of § 1225(b)(2)(A) requires detention of all applicants for admission.

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission as being subject to discretionary detention under 8 U.S.C. § 1226(a), rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *Hurtado*, 29 I. & N. Dec. at 225 n.6. Until 2025, however, the Board of Immigration Appeals had not issued any controlling

opinion on the appropriate detention authority for such individuals.

On July 8, 2025, U.S. Customs and Immigrant Enforcement (“ICE”) issued interim guidance reflecting that DHS “revisited its legal position on detention and release authorities” and brought the Executive’s practices in line with the statute’s plain text. *See, e.g.*, Memorandum from Rodney S. Scott, U.S. Customs & Border Protection, Detention of Applicants for Admission (July 10, 2025), https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf. Specifically, DHS concluded that “applicants for admission are subject to mandatory detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from DHS custody except by INA § 212(d)(5) parole.” *Id.* As a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127].” *Id.*

The BIA recently held as much in *Hurtado*. The BIA concluded that 8 U.S.C. § 1225(b)(2)’s mandatory detention regime applies to all aliens who entered the United States without inspection and admission, stating that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Hurtado*, 29 I. & N. Dec. at 228. As well, the BIA observed that “[r]emaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* Thus, under BIA precedent, immigration judges “lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Id.* at 225.

D. Special Immigrant Juvenile Classification

Special Immigrant Juvenile classification (“SIJC”) is available to aliens under the age of

21 who have been declared dependent on a juvenile court, or legally committed to or placed into the custody of an entity or individual, and whose reunification with at least one parent is not viable. 8 U.S.C. § 1101(a)(27)(J). To obtain SIJC, a noncitizen must (1) be under 21 years of age at the time of filing a petition for SIJC (*i.e.*, a Form I-360); (2) be unmarried at the time of filing and adjudication; (3) be physically present in the United States; (4) be subject to a qualifying juvenile court order; and (5) “[o]btain[] consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.” 8 C.F.R. § 204.11(b); *see id.* § 204.11(c)-(d).

SIJC is a pathway to lawful status: if the SIJ petition is approved, the alien becomes eligible to adjust status to a lawful permanent resident (“LPR”)—a benefit within the federal government’s discretion to confer—and certain statutory grounds of inadmissibility are waived or waivable in that context and with respect to deportability. *See* 8 U.S.C. §§ 1227(c), 1255(a), (h); *Reyes v. Cissna*, 737 F. App’x 140, 142 (4th Cir. 2018). For purposes of adjustment of status, a noncitizen with SIJC is “deemed . . . to have been paroled into the United States.” 8 U.S.C. § 1255(h)(1).

The number of immigrant visas annually available to aliens with SIJC is limited, however. Consequently, because there are more aliens with SIJC than available visas, aliens with SIJC must wait, sometimes for years, before an immigrant visa is available, which is determined by the SIJ’s priority date (*i.e.*, the date when USCIS received their SIJ petition). Thus, while SIJs may eventually apply to adjust status to that of an LPR, many are still subject to arrest, detention, and removal from the United States until their priority date is current. *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (“SIJ designation does not strip the U.S. government of all removal powers.”). Because of the visa backlog, in March 2022, USCIS announced that it would begin automatically conducting deferred action determinations for aliens with SIJC, meaning removal proceedings for those aliens are temporarily deferred. *See* Stack Decl.

Ex. A. Deferred action “does not provide lawful status.” *Id.* Rather, it is an act of prosecutorial discretion and may be revoked at any time for any reason. *Id.*

II. Factual Background and Procedural History

A. Petitioner entered the United States without admission and was later detained for removal proceedings.

On January 24, 2019, Petitioner, a native and citizen of Guatemala, was apprehended with his father by U.S. Border Patrol near Lukeville, Arizona, after he and his father entered the United States without inspection on or about that same date. Declaration of Michael Fisher (“Fisher Decl.”) ¶ 4. On January 27, 2019, Petitioner was issued a Notice to Appear in immigration court. *Id.* ¶ 5. Petitioner was released from DHS custody on or about January 28, 2019. *Id.* ¶ 6.

On July 27, 2022, USCIS approved Petitioner’s Form I-360 Petition for SIJ classification. *Id.* ¶ 7. Petitioner was also granted a discretionary grant of deferred action for a period of four years, or until July 26, 2026, during which time he would be considered a “lower priority or removal from the United States.” *See* Dkt. 1 ¶ 1; Dkt 1-2.

On October 17, 2025, after receiving a call for assistance from local law enforcement regarding Petitioner, U.S. Border Patrol arrested Petitioner and transferred him into the custody of ICE. Fisher Decl. ¶ 8. ICE detained Petitioner at the Broome County Correctional Facility in Binghamton, New York, where he remains detained. *Id.* ¶ 9.

On December 19, 2025, an IJ issued an order terminating Petitioner’s immigration removal proceedings. *Id.* ¶ 10. On January 12, 2026, DHS filed a notice of appeal of the IJ’s order with the BIA. *Id.* ¶ 11. Petitioner’s removal proceedings therefore remain pending.

B. Proceedings in district court.

On January 5, 2026, Petitioner filed a petition for writ of habeas corpus in the Western

District of New York. *See Gaspar v. Rhoney, et al.*, W.D.N.Y. 26-CV-13 (JLS), Dkt. 1 (Petition). The case was assigned to Judge John L. Sinatra, Jr. On January 14, 2026, the Government moved to dismiss; its primary argument was that Judge Sinatra had already ruled, in a prior case, that aliens who enter the United States unlawfully, without admission or inspection and parole, are applicants for admission as defined at 8 U.S.C. § 1225(a)(1). *See id.*, Dkt. 7 (Motion to Dismiss); *see also Candido v. Bondi*, No. 25-CV-867 (JLS), 2025 WL 3484932, at *1 (W.D.N.Y. Dec. 4, 2025).⁵ On January 23, 2026, Petitioner voluntarily discontinued his case filed in the Western District of New York. *See Gaspar v. Rhoney, et al.*, W.D.N.Y. 26-CV-13 (JLS), Dkt. 8 (Stipulation).

On January 23, 2026, Petitioner refiled his writ of habeas corpus in this district, which is identical to the one filed in the Western District of New York, except for one paragraph identifying the Warden of the Broome County Correctional Facility. *See* Dkt. 1 ¶ 7. On the same date, the Court issued an order to show cause and directed Respondents file a response to the Petition no later than Tuesday, January 27, 2026. *See* Dkt. 2. Petitioner asserts that the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to him, as a noncitizen who previously entered the country and has been residing in the United States before being apprehended and placed in removal proceedings. Dkt. 1 ¶ 56. In his view, the authority to detain Petitioner derives from 8 U.S.C. § 1226(a), and applying § 1225(b)(2) to Petitioner renders his continued detention unlawful and violative of the INA. *See id.* ¶ 57. He also argues that his detention without a bond redetermination hearing to determine if he is a flight risk or danger to others, violates his right to

⁵ Notably, *Candido* is conspicuously absent from Petitioner's string citation purporting to support the proposition that "every judge sitting in this Court who has made a decision so far" has rejected Respondents' interpretation of its statutory detention authorities. *See* Dkt. 1 ¶ 38. As *Candido* makes clear, that is not true of the Western District of New York; nor is it true of this district, as this appears to be an issue of first impression here.

due process and is arbitrary, capricious, and not in accordance with law, in violation of the Administrative Procedure Act. *Id.* ¶¶ 62, 65. Accordingly, Petitioner requests that the Court order his release or, in the alternative, require an individualized bond hearing under § 1226(a) within either 7 or 14 days. Dkt. 1 ¶ 5, Prayer for Relief ¶ 10.

Legal Standard

The writ of habeas corpus extends to a prisoner who is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). District courts may grant such a writ “within their respective jurisdictions.” *Id.* § 2241(a). As a general rule, “[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,’ he must file the petition in the district of confinement and name his immediate custodian as the respondent.” *Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004)).

Argument

The text of 8 U.S.C. § 1225(b)(2)(A) resolves this case. That statute’s plain language requires DHS to detain aliens, like Petitioner, who are present in the United States without admission. That mandate applies regardless of how long an alien has been unlawfully present in the United States, or how far inland from the border an alien managed to travel before being detained. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”). The interpretation offered by Petitioner is incompatible with the statutory text and undermines Congress’s manifest purposes in adopting § 1225(b)(2)(A) through IIRIRA. Because the statute is clear that Petitioner is subject to mandatory detention under § 1225(b)(2)(A), his Petition must be denied.

I. Petitioner’s detention is lawful and appropriate under 8 U.S.C. § 1225(b)(2).

The relevant facts are not disputed: (i) Petitioner is not a citizen or national of the United States; (ii) he unlawfully entered the United States in January 2019 and was placed in removal proceedings under 8 U.S.C. § 1229a; (iii) he has not been admitted; (iv) he was released and recently re-detained. *See generally* Fisher Decl. By statute, those undisputed facts make Petitioner an “applicant” for admission because, even though he is present here and was previously released on his own recognizance, he was not and has never been lawfully admitted. *See* 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109 (“[A]n alien present in the United States who has not been admitted . . . ’ is deemed ‘an applicant for admission.’”).

Section 1225(a) defines all aliens who are “present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States” as “applicant[s] for admission.” 8 U.S.C. § 1225(a)(1). And “admission” for INA purposes means not mere physical entry, but rather, “lawful entry . . . after inspection” by immigration authorities. *Id.* § 1101(a)(13)(A). Thus, an alien who enters the country without inspection and admission is, and remains, an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border. *See Candido*, 2025 WL 3484932, at *1-4; *Chen v. Almodovar*, No. 25-CV-9670, 2026 WL 100761, at *6-13 (S.D.N.Y. Jan. 14, 2026).

In turn, § 1225(b)(2) provides that “an alien who is an applicant for admission shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute’s use of the term “shall” denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2) “mandate[s] detention”). And like § 1225(a), § 1225(b)(2) makes no exception for either the alien’s duration of

presence in the country or the distance of his travel into the country.

Therefore, except for those aliens expressly exempted, the statute's plain text requires that DHS detain all "applicants for admission" who are not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). *See, e.g., Qiwei Weng v. Genalo*, No. 25- Civ. 09595 (JHR), 2026 WL 184627, at *3-4 (S.D.N.Y. Jan. 23, 2026); *Yinxiao Chen*, 2026 WL 100761, at *8; *Xiaoquan Chen v. Almodovar*, 25-cv-8350-MKV, 2025 WL 3484855, at *3-8 (S.D.N.Y. Dec. 4, 2025); *Candido*, 2025 WL 3484932, at *1-5; *see also, e.g., Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025), *Cabanas v. Bondi*, 2025 WL 3171331, at *4-6 (S.D. Tex. Nov. 13, 2025), *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at *3-6 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 25-CV-01612 SEC, 2025 WL 3486894, at *1-2 (W.D. La. Dec. 3, 2025); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *6-12 (W.D. Okla. Dec. 26, 2025).

Petitioner falls squarely within the statute's definition. He was "present in the United States." There is no dispute that he has "not been admitted." And, he does not fall in any of the exceptions to § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(a), (b)(2)(B). Moreover, Petitioner did not—and cannot—establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, the statute requires that Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

A. Section 1225(b) is not limited geographically or temporally.

Contrary to Petitioner's assertions, § 1225(b) is not limited to "people arriving at U.S. ports of entry or who recently entered the United States," nor is it "premised on inspections at the border

of people who are ‘seeking admission’ to the United States.” Dkt. 1 ¶ 43.

Every “applicant for admission” is “seeking admission” and therefore covered by § 1225(b)(2)(A). *See Yinxiao Chen*, 2026 WL 100761, at *9 (“Section 1225 itself expressly treats applicants for admission as among those seeking admission—indeed, it does so twice.”). The statute makes this clear in two ways. First, § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States.” 8 U.S.C. § 1225(a) (emphasis added). “This provision contemplates that an applicant for admission is one who, by default, is seeking admission.” *Yinxiao Chen*, 2026 WL 100761, at *9.

Second, that “applicants for admission” are “seeking admission” is evident from § 1225(a)(3). *Id.* That is, the fact that “applicant for admission” is a subset of those who are “seeking admission” was made clear by Congress in § 1225(a)(3), which provides that “[a]ll aliens . . . who are applicants for admission or otherwise seeking admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” in § 1225(a)(3) “means ‘in a different way or manner[.]’” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of U.S. v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that any alien who is an “applicant for admission” is “seeking admission” for purposes of § 1225(b)(2)(A). “Put differently, noncitizens seeking admission may be a broader category than applicants for

admission, but not a narrower one, as that category already includes applicants for admission under the statute.” *Yinxiao Chen*, 2026 WL 100761, at *9.

Neither the duration of an alien’s unlawful presence in the United States nor his distance from the border alters the legal reality that an “applicant for admission” is “seeking admission.” “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to,” but did not in § 1225(b)(2)(A). *Mejia Olalde*, No. 2025 WL 3131942, at *4; *Yinxiao Chen*, 2026 WL 100761, at *11. By contrasting example, § 1225(b)(1) may apply to aliens “arriving in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-year period.” 8 U.S.C. § 1225(b)(1). So, “[i]f Congress meant to say” in § 1225(b)(2)(A) “that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4; ; *Yinxiao Chen*, 2026 WL 100761, at *11. It did not. To the contrary, § 1225(a)(1)’s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country. 8 U.S.C. § 1225(a)(1).

Courts which have taken a different view of “seeking admission”—as requiring “some active desire or process toward admission”—“have introduced more questions to the statute than answers.” *Yinxiao Chen*, 2026 WL 100761, at *9. For example, “at what point does an alien who enters unlawfully no longer actively desire admission?” *Id.* And, “when is someone already here?” *Id.* None of the courts who have taken the differing view have been able to say. *See id.* (citing *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025) (“To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious.”)). “The answer to these messy questions, then, is the one that Congress has already

provided throughout Section 1225: an applicant for admission is ‘seeking admission,’ even when that noncitizen is ‘present in the United States’ without having ‘been admitted.’” *Id.*

In sum, for purposes of § 1225(b)(2) and its regulation of “applicants for admission,” § 1225 provides that an alien who is an “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate, affirmative act to obtain admission. If an alien is in removal proceedings to obtain authorization to remain in the United States, then he is seeking to be admitted. As an alien covered by § 1225(b)(2), Petitioner “shall be” detained pending completion of his removal proceedings, and he has no access to a bond hearing or any other avenue to secure his release besides DHS’s discretionary parole authority, which it has not exercised. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225(b)(2)(A) places Petitioner under its ambit, it mandates detention, and such text is where this Court’s “analysis” should “begin[] and end[].” *See Little Sisters of the Poor Saints Peter & Paul Home*, 591 U.S. at 676.

Yet even if the Court went beyond the plain text, consideration of Congress’s goal, through IIRIRA, to eliminate preferential treatment for aliens who unlawfully enter the country confirms Respondents’ authority to detain Petitioner under § 1225(b)(2). *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”), *N.Y.S. Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”). As discussed above, one of IIRIRA’s express objectives was to do away with the pre-1996 framework under which aliens who entered the United States unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the right to secure release on bond. House Rep., at 225. Adopting Petitioner’s interpretation would restore the framework that Congress sought to discard, whereas, by contrast, Respondents’

interpretation adheres to the statute's plain text and Congressional intent.

B. Authority from the Supreme Court and courts in the Second Circuit supports Petitioner's mandatory detention under § 1225(b)(2).

Petitioner's detention under § 1225(b)(2)(A) comports with Supreme Court precedent. As *Jennings* explains, applicants for admission are covered either by § 1225(b)(1) or (b)(2). *See* 583 U.S. at 287. Section 1225(b)(1) covers applicants for admission who assert a credible fear of persecution, and it mandates detention. 8 U.S.C. § 1225(b)(1)(B)(ii), (B)(iii)(IV). Section 1225(b)(2)—the provision relevant here—“serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. And it mandates detention for them during removal proceedings. *Id.* at 297, 302 (“[Section] 1225(b)(2) . . . mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

Additionally, several courts, including in this Circuit, have endorsed Respondents' reading of § 1225. *See Qiwei Weng v. Genalo*, No. 25 CIV. 09595 (JHR), 2026 WL 184627, at *3 (S.D.N.Y. Jan. 23, 2026); *Yinxiao Chen v. Almodovar*, 25-CV-09670, 2026 WL 100761, at *6-13 (S.D.N.Y. Jan. 14, 2026); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932, at *1-4 (W.D.N.Y. Dec. 4, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, *1, *4-8 (S.D.N.Y. Dec. 4, 2025), *appeal filed*, 2d Cir. No. 25-3169 (Dec. 18, 2025). Numerous other courts have reached the same conclusion and are listed in the margin.⁶

⁶ *See, e.g., Sandoval*, 2025 WL 3048926, at *5 (rejecting petitioner's assertion that he was detained pursuant to § 1226(a) rather than § 1225(b)(2)); *Rojas*, 2025 WL 3033967, at *7; *Mejia Olalde*, 2025 WL 3131942 (same); *Vargas Lopez v. Trump*, No. 25 Civ. 526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (same); *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*, 2025 WL 3199872, at *8 (same); *Chavez v. Noem*, No. 25 Civ. 2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (same).

The Government acknowledges that multiple district courts have accepted arguments that § 1225(b)(2)(A) does not apply in similar circumstances. *See, e.g., Cardenas v. Almodovar*, No. 25 Civ. 9169, 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025) (surveying cases and noting “scores of decisions—in this Circuit and beyond—on the Section 1226(a) side of the split”). Nevertheless, as the *Yinxiao Chen* court observed, “different jurists can be faced with a difficult legal question and come out differently.” 2026 WL 100761, at *1. And, the Second Circuit is poised to resolve this dispute, as the Government recently filed a notice of appeal from a decision challenging a grant of habeas relief, arguing that § 1226(a), not § 1225(b)(2)(A), governs. *Barbosa da Cunha v. Moniz*, 2d Cir. No. 25-3141. The Government filed its opening brief on January 16, 2026, *see id.* Dkt. 21. The matter is expected to be fully briefed by March 3, 2026, and the Second Circuit has granted expedited review. *See id.* Dkt. 24.

II. Petitioner’s detention does not violate due process.

Contrary to Petitioner’s argument, *see* Dkt. 1 ¶ 61, his detention, despite his grant of SIJC status and deferred action, does not violate his right to due process. Petitioner sets forth no statute, regulation, case law, or other authority that supports his apparent argument that his SIJC precludes ICE from detaining and removing him. This is because no such source of authority exists. Instead, as USCIS has explained, “SIJ classification does not render a noncitizen lawfully present” and “does not confer lawful status.” USCIS Policy Alert 2022-10, Special Immigrant Juvenile Classification and Deferred Action, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

Multiple courts have explained that SIJC does not foreclose detention and removal from the United States. For example, the Third Circuit considered, and answered in the affirmative, the question of whether an SIJ recipient “is subject to removal simply for presence in the United States

‘without being admitted or paroled.’” *Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432 (3d Cir. 2023). In that case, the alien (like Petitioner) was charged as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which provides that “[a]n 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.” Although this ground of inadmissibility does not prevent an SIJC designee from applying for adjustment of status, *see* 8 U.S.C. § 1255(h)(2), the court found that it does apply for purposes of *removal*. *Cortez-Amador*, 66 F.4th at 433 (finding the “plain language demonstrates that Petitioner is removable despite his SIJ[]” classification).

Similarly, in *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018), the court held that “an SIJ designation does not strip the U.S. government of all removal powers.” Instead, the court explained, “the government retained the power to remove [the petitioner] in spite of his SIJ status” because of his inadmissibility to the United States. *Id.* The court also rejected the argument that an SIJ designee has lawful status because of § 1255(h), which deems an SIJ “paroled into the United States” because that section only applies for the purpose of applying for adjustment of status. *Id.* at 361. Explained further, “§ 1255(h) does not accord [the petitioner] parolee status for any purposes other than for his application for adjustment of status” and “does not make [the petitioner’s] presence lawful.” *Id.* at 362; *see also Cruz-Gonzalez ex rel. D.M.S.C. v. Kelly*, No. CV 16-5727, 2017 WL 3390234, at *5 (E.D. Pa. Aug. 7, 2017) (rejecting argument that SIJ approval grants immigration status and prevents removal from the United States and also agreeing with government’s argument that being “deemed paroled” under 8 U.S.C. § 1255(h) “does not cancel a final order of removal or an underlying basis of inadmissibility or removability.”). Accordingly, Petitioner’s SIJC does not provide him with lawful immigration status in the United States and does not bar ICE from effectuating his removal.

Similarly, to the extent Petitioner claims that detention is unconstitutional because USCIS previously granted him deferred action, such claim is without merit. USCIS makes clear that “[d]eferred action does not provide lawful status” and that it is instead “an act of prosecutorial discretion that defers proceedings to remove an alien from the United States for a certain period.” *USCIS to Offer Deferred Action for Special Immigrant Juveniles* (March 7, 2022) <https://www.uscis.gov/archive/uscis-to-offer-deferred-action-for-special-immigrant-juveniles>; Stack Decl., Ex. A; *see also* 8 C.F.R. § 274a.12(c)(14) (providing that deferred action is “an act of administrative convenience to the government that gives some cases *lower priority*” for removal) (emphasis added). USCIS “reserves the right to terminate the grant of deferred action and revoke the related employment authorization at any time as a matter of discretion.” *Id.* At bottom, ICE’s detention of Petitioner is authorized by statute and does not violate the Constitution.

III. Petitioner’s Administrative Procedure Act claim fails.

Petitioner next argues, under the Administrative Procedure Act, that the Government’s decision to detain him was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” and “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” Dkt. 1 ¶ 65 (quoting 5 U.S.C. § 706(2)(A), (C)). But Petitioner’s reliance on the APA jurisdiction is misplaced for several reasons, including the lack of final agency action and the availability of alternative adequate remedies at law. This a habeas-only case, and Petitioner’s APA claim should be rejected.

By the APA’s terms, it is available only for “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704; *see also Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (explaining that an action under 5 U.S.C. § 702 must also satisfy the requirements of § 704). “As a general matter, two conditions must be satisfied for agency action to be ‘final’: First,

the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (cleaned up). But Petitioner does not identify a final agency action, and his deportation proceedings are ongoing. Therefore, APA relief is unavailable.

Additionally, in *Trump v. J.G.G.*, the Supreme Court held that where immigration detainees' claims “necessarily imply the invalidity of [] confinement,” those claims “must be brought in habeas.” 604 U.S. 670, 672 (2025). As noted by Justice Kavanaugh in a concurrence, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 674 (Kavanaugh, J. concurring). The same holds true for this Petition. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that habeas corpus is the sole relief when a prisoner challenges “the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment). Petitioner is thus not entitled to any relief under the APA.

Conclusion

For the above reasons, the Court should deny the Petition and dismiss the case.

Dated: January 27, 2026

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