UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GREYBIN AMIR CHAVARRIA-ZEPEDA

Petitioner,

- against -

Pam Bondi, U.S. ATTORNEY GENERAL,
Kristi Noem, U.S. SECRETARY OF HOMELAND SECURITY,
Todd Lyons, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, and
Brian Flanagan, ACTING DEPUTY FIELD OFFICE DIRECTOR FOR U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, NEW YORK AREA

Respondents.

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Civil Action No. 26-CV-1095

(DeArcy Hall, J.)

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

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Date of Service: March 16, 2026

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 2

I. Statutory And Regulatory Framework 2

A. Congress Eliminates Preferential Treatment For Aliens Who Unlawfully Entered And Mandates Detention Of All "Applicants For Admission" 3

B. Congress Consolidates The Detention Authority For Certain Aliens With Certain Criminal Records 6

II. Petitioner's Relevant Immigration And Detention History 6

ARGUMENT 8

I. Petitioner Is Detained Under 8 U.S.C. § 1225(b)(2)(A) 9

II. Petitioner Is Detained Under 8 U.S.C. § 1226(c)(1)(E) 11

III. Petitioner's Detention Comports With Procedural Due Process 13

A. An Applicant For Admission Is Due Only The Process Congress Provides, Which Petitioner Received Under § 1226(c)(1)(E) 14

B. Petitioner Was Not Entitled To A Bond Hearing When His Detention Began 16

C. Even Under The (Inapplicable) *Mathews* Factors, Petitioner's Detention Comports With Due Process 19

IV. Petitioner's Detention Does Not Violate Substantive Due Process Because It Does Not Shock The Conscience 20

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Abdel v. United States, 362 U.S. 217 (1960) 2

Alvarado Quezada v. Francis, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) 10

Arana v. Arteta, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) 10

Avramenkov v. INS, 99 F. Supp. 2d 210 (D. Conn. 2000) 21

Black v. Decker, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert petition filed*, No. 25-886 (Jan. 22, 2026) ..... passim

Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026) 4

Calderon v. Noem, 2025 WL 3754042 (W.D. Wash. Dec. 29, 2025) 19

Carlson v. Landon, 342 U.S. 524 (1952) 21

Cty. of Sacramento v. Lewis, 523 U.S. 833 (1998) 21

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

DHS v. Thuraissigiam, 591 U.S. 103 (2020) 5, 15

Doe v. Moniz, 800 F. Supp. 3d 203 (D. Mass. Sept. 5, 2025) 18

Espinoza Lopez v. Noem, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) 10

Estrada Alfaro v. Genalo, No. 26-cv-761, Order (E.D.N.Y. Mar. 13, 2026) 1, 9

Goe v. Zucker, 43 F.4th 19 (2d Cir. 2022) 21

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

Guzman v. Tippy, 130 F.3d 64 (2d Cir. 1997) 15

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

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

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

Landon v. Plasencia, 459 U.S. 21 (1982) 16

Lares v. Bondi, et al., No. 1:25-cv-1562 (E.D. Va. Oct. 29, 2025) 19

Liang v. Almodovar, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) 10

Maldonado Bautista v. Santacruz, et al., No. 26-1004, Dkt. No. 3.1 (9th Cir. Feb. 26, 2026) 3

Maldonado Bautista, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026) 3

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

Mathews v. Eldridge, 424 U.S. 319 (1976) 14

Mendez Ramirez v. Decker, 612 F. Supp. 3d 200 (S.D.N.Y. 2020) 14

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

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

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

Rafeedie v. INS, 880 F.2d 506 (D.C. Cir. 1989) 21

Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022) 20

Rohit Lnu v. Chestnut, 2026 WL 395882 (E.D. Cal. Feb. 12, 2026) 12

Saamishvili v. Flanagan, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026), *notice of appeal filed* Feb. 12, 2026 9

Salim v. Tryon, No. 13-cv-6659, 2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014) 16

Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953) 15, 16, 21

Sidqui v. Almodovar, 2026 WL 251929 (S.D.N.Y. Jan. 30, 2026) 12

Singh v. Genalo, No. 26-cv-937, Order, (E.D.N.Y. Mar. 13, 2026) 1, 9

Torres v. Barr, 976 F.3d 918 (9th Cir. 2020) (en banc) 4

Urena v. Plymouth County Correctional Facility, et al, No. 25-cv-13352-JEK, Order dated Dec. 9, 2025 (D. Mass. Dec. 9, 2025) 19

Vasquez v. Moniz, et al., No. 25-cv-13371-RGS, ECF No. 14 (D. Mass. Dec. 9, 2025) 19

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020) 3, 21

Velez v. Levy, 401 F.3d 75 (2d Cir. 2005) 20

Weinstein v. Albright, 261 F.3d 127 (2d. Cir. 2001) 14

Weng v. Genalo, 2025 WL 194248 (S.D.N.Y. Jan. 25, 2026) 10

Wong Wing v. United States, 163 U.S. 228 (1896) 21

Xiaoquan Chen v. Almodovar, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) 4, 5, 10

Yinxiao Chen v. Almodovar, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) 9

Statutes

8 U.S.C. § 1101(a)(13) (1994) 3

8 U.S.C. § 1101(a)(13)(A) 4

8 U.S.C. § 1101(a)(13)(B) 6

8 U.S.C. § 1182(a)(6)(C) 6, 8

8 U.S.C. § 1182(a)(7) 6

8 U.S.C. § 1182(d)(5) 6

8 U.S.C. § 1182(d)(5)(A) 5, 6

8 U.S.C. § 1225(a) (1995) 3

8 U.S.C. § 1225(a)(5) 4

8 U.S.C. § 1225(b)(1) 4

8 U.S.C. § 1225(b)(1)(A)(i) 5

8 U.S.C. § 1225(b)(1)(A)(ii) 5

8 U.S.C. § 1225(b)(1)(A)(iii) 5

8 U.S.C. § 1225(b)(1)(B)(iii)(IV) 5

8 U.S.C. § 1225(b)(2) 4

8 U.S.C. § 1225(b)(2)(B) 5

8 U.S.C. § 1225(b)(2)(C) 5

8 U.S.C. § 1226(a) 12

8 U.S.C. § 1226(a) (1995) 3

8 U.S.C. § 1226(c) 6

8 U.S.C. § 1226(c)(1)(A)-(D) 6

8 U.S.C. § 1226(c)(1)(E) 11, 16

8 U.S.C. § 1226(c)(1)(E)(i) 6

8 U.S.C. § 1226(c)(1)(E)(ii) 6

8 U.S.C. § 1226(c)(2) 6

8 U.S.C. § 1226(c)(3) 6, 11

8 U.S.C. § 1226(c)(4) 6, 12

8 U.S.C. § 1229a 5

8 U.S.C. § 1231(a)(1)(B) (1995) 3

8 U.S.C. § 1252(a)(1) (1995) 3

8 U.S.C. §§ 1225(b) (1995) 3

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996) 4, 6

Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.* 3, 16

Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025) 6

Regulations

8 C.F.R. § 1.2 6

8 C.F.R. § 235.3(b)(1)(ii) 5

8 C.F.R. § 235.3(b)(4)(ii) 5

Respondents respectfully submit this memorandum of law in opposition to the Amended Petition for Writ of Habeas Corpus, ECF No. 7 (the "Am. Pet."), and in response to this Court's Order to Show Cause, dated March 6, 2026.

PRELIMINARY STATEMENT

This habeas action is materially different than the two recent habeas petitions this Court granted in *Estrada Alfaro v. Genalo*, No. 26-cv-761, Order (E.D.N.Y. Mar. 13, 2026), and *Singh v. Genalo*, No. 26-cv-937, Order, (E.D.N.Y. Mar. 13, 2026), because Petitioner is subject to the detention authority for aliens with certain criminal records in 8 U.S.C. § 1226(c)(1)(E). He challenges his detention only on due process grounds. But Second Circuit precedent, *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert petition filed*, No. 25-886 (Jan. 22, 2026), forecloses Petitioner's claim. His habeas petition should, therefore, be denied.

As background, in those prior cases, the central legal issue was whether the detention of an alien without a criminal record who was detained by U.S. Customs and Immigration Enforcement ("ICE") was governed by 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a). As this Court indicated in a docket entry in both, although not having yet issued a decision laying out the reasoning in full, because "Petitioner's detention was governed by 8 U.S.C. § 1226 . . . Petitioner was entitled to an individualized custody determination," and because he did not receive one, "in view of the considerations set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), . . . Petitioner's due process rights" were violated. *See* No. 26-cv-761, Order (E.D.N.Y. Mar. 13, 2026); No. 26-cv-937, Order, (E.D.N.Y. Mar. 13, 2026).

As in both prior cases, Respondents' position here is that because Petitioner has never been admitted to the United States, he is an applicant for admission (a fact he confirms (*see* Am. Pet. ¶ 46)) who is, therefore, subject to the detention authority in § 1225(b)(2)(A). Respondents

respectfully acknowledge that if this Court adheres to its conclusions in *Alfaro* and *Singh*, it would not reach such holding.

The Court's conclusion in those prior cases, however, does not resolve this case. That is because here, as he confirms, Petitioner was arrested and arraigned on a grand larceny charge in January 2026, and his charge is pending. Petitioner's pending grand larceny charge places him under the detention authority Congress created for aliens with certain criminal records in 8 U.S.C. § 1226(c)(1)(E). Such detainees must remain detained for the duration of their removal proceedings, Congress expressly excepted them from the bond hearing available to § 1226(a) detainees, and they may only be released if one of the limited, enumerated circumstances in § 1226(c)(4) are satisfied, which they are not – a fact Petitioner does not contest.

Petitioner nonetheless argues that detaining him without a bond hearing preceding his detention violated procedural and substantive due process. But because it is undisputed that Petitioner has never been admitted, the process he is due is the process Congress provided, and the *Mathews* due process balancing test does not govern. Section 1226(c)(1)(E) does not permit Petitioner a bond hearing, so his procedural due process rights are not violated. As *Black* confirms (a case that also concerned a § 1226(c)(1) detainee), "due process does not require an initial bond determination for those detained under section 1226(c)," which forecloses Petitioner's claim. And nothing about Petitioner's detention shocks the conscience, so his substantive due process rights were not violated. The Am. Pet. should therefore be denied.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY FRAMEWORK

For more than a century, Congress has authorized immigration officials to arrest and detain certain aliens subject to removal until their removal proceedings conclude with admission or removal. *See Abdel v. United States*, 362 U.S. 217, 233-34 (1960). Over time, the aliens those laws

cover, the scope of the authority to detain, and the avenues for release have evolved. But it has remained true that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process" because "deportation proceedings would be vain if those accused could not be held in custody pending the inquiry." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020).

A. Congress Eliminates Preferential Treatment For Aliens Who Unlawfully Entered And Mandates Detention Of All "Applicants For Admission"

Before 1996, under the INA, 8 U.S.C. § 1101 *et. seq.*, whether an alien had physically entered the United States or not – defined at that time as "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994) – "dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025)[1]; *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995). But the pre-1996 INA framework had "unintended and undesirable consequence[s]." *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012); *see Hing Sum*, 602 F.3d at 1100 (similar). "[A]liens who entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, including the right to request release on bond, while aliens who had actually presented themselves to authorities for inspection . . . were subject to mandatory custody." *Hurtado*, 29 I. & N. Dec. at 223.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility

[1] A Judge in the Central District of California recently vacated *Hurtado*'s holding on the construction of §§ 1225(b)(2)(A) and 1226(a). *See Maldonado Bautista*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). The Government has sought a stay pending appeal. *See Maldonado Bautista v. Santacruz, et al.*, No. 26-1004, Dkt. No. 3.1 (9th Cir. Feb. 26, 2026). And on March 6, 2026, the Ninth Circuit granted a temporary administrative stay of the vacatur and also of the *Maldonado Bautista* declaratory judgment "insofar as the district court's judgment extends beyond the Central District of California," pending adjudication of the motion to stay pending appeal. *Id.*, Dkt. No. 5.1, at 1. . In any event, to the extent Respondents cite *Hurtado* here, it is to provide a helpful summary of past practices. As detailed below, Respondents' construction is independent of *Hurtado*, albeit consistent with *Hurtado*.

Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996). As codified at 8 U.S.C. § 1225(a)(1), "an alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) shall be deemed . . . an applicant for admission." Congress defined "admitted" with a new modifier: "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Thus, through IIRIRA, Congress no longer separated aliens who "enter[ed]" unlawfully from aliens who were inspected at a port of entry, but instead "group[ed] together" as "applicants for admission," who receive "the same treatment," all "arriving aliens (i.e. aliens who have not yet entered) and aliens who are already present in the United States but did not enter lawfully." *See Xiaoquan Chen v. Almodovar*, 2025 WL 3484855, at *3 (S.D.N.Y. Dec. 4, 2025). This new categorization fulfilled Congress's "predominant goal" in enacting IIRIRA of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499 (5th Cir. 2026).

"All aliens . . . who are applicants for admission or otherwise seeking admission . . . shall be inspected by immigration officers" to determine their admissibility. *See* 8 U.S.C. § 1225(a)(3). Under § 1225(a)(5), "[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."

Applicants for admission who are not deemed admissible upon such inspection fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," with detention mandated for both. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies only to applicants for admission who are "arriving in the United States" or have "not been admitted or paroled into the United States," and also, among other aliens, those who have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, IIRIRA created expedited removal proceedings and required detention during such proceedings. *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020); 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(B)(iii)(IV); C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii).

Section 1225(b)(2) is a "catchall" covering "all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. For them, § 1225(b)(2)(A) requires detention, as well:

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

8 U.S.C. § 1225(b)(2)(A)[2]; 8 C.F.R. § 235.3(b)(1)(ii); *Jennings*, 583 U.S. at 302 (§ 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings"); *Xiaoquan Chen*, 2025 WL3484855, at *3 (§ 1225(b)(2)(A) detention is "mandatory").

In sum, § 1225(b)(1) and (2) "unequivocally mandate that aliens falling within their scope 'shall' be detained," and such "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum . . . or until removal proceedings have concluded." *Jennings*, 583 U.S. at 299-300. Neither provide for a bond hearing. The only alternative is discretionary parole under 8 U.S.C. § 1182(d)(5)(A). *Id.* at 288. However, Congress provided that

[2] Section 1225(b)(2)(A) does not apply to crewmen or stowaways. 8 U.S.C. § 1225(b)(2)(B). The Executive also may return aliens who arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

when an alien is granted such parole, it "shall not be regarded as an admission of the alien." 8 U.S.C. § 1182(d)(5)(A); *accord* 8 U.S.C. § 1101(a)(13)(B); 8 C.F.R. § 1.2.

B. Congress Consolidates The Detention Authority For Certain Aliens With Certain Criminal Records

Congress, through IIRIRA, also streamlined the detention authorities covering aliens with certain criminal records, amending 8 U.S.C. § 1226(c) to replace the former 8 U.S.C. § 1252(a) and § 1226(e). *See* Pub. L. No. 104-208 § 303. Under § 1226(c), the Executive "shall take into custody any alien who" "committed" certain offenses enumerated in 8 U.S.C. §§ 1182 and 1227 or engaged in terrorism-related activities. *See* 8 U.S.C. § 1226(c)(1)(A)-(D). For them, there is no humanitarian parole option under § 1252(d)(5). Rather, Congress permitted release only if the Department of Homeland Security ("DHS") determines it "is necessary" to protect certain witnesses to criminal activity and if the alien "will not pose a danger" to public safety and is not a flight risk. 8 U.S.C. § 1226(c)(4); *Jennings*, 583 U.S. at 289.

To § 1226(c)(1), the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025), added categories of covered aliens for whom "custody" is mandatory. Under 8 U.S.C. § 1226(c)(1)(E), custody is mandated over an alien who is inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7) and "charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." Like subsection (c)(1)(A)-(D) aliens, subsection (c)(1)(E) aliens are ineligible for parole under § 1252(d)(5) and may only be released for the reasons in § 1226(c)(4).

II. PETITIONER'S RELEVANT IMMIGRATION AND DETENTION HISTORY

Petitioner Greybin A. Chavarria-Zepeda is a native and citizen of Nicaragua. *See* Declaration of Mayra Pardo-Figueroa ("ICE Decl.") ¶ 2. He entered the United States on

September 29, 2022, after crossing the southern border into Texas at a time and place other than as designated by the Executive. *Id.* ¶ 3. He has never been admitted to the United States and confirms he is an applicant for admission. *See* Am. Pet. ¶ 46.

On that day, Petitioner was encountered by U.S. Customs and Border Protection ("CBP"), who determined he had entered the country illegally, placed him under arrest, and transported him to the El Paso Border Patrol Sector for processing. *Id.* Petitioner was later transported to the San Diego Border Patrol Sector. *Id.* At that time, Petitioner was detained under 8 U.S.C. § 1225(b)(2)(A). *Id.*

One week after his unlawful entry, CBP paroled Petitioner into the country under 8 U.S.C. § 1252(d)(5) due to a lack of detention capacity. *Id.* ¶ 4. Petitioner was paroled until November 29, 2022. *Id.* When Petitioner was placed on parole, he was also enrolled in an Alternative To Detention ("ATD") program, which required him to report to the DHS office at 26 Federal Plaza, New York, New York, on October 19, 2022. *Id.* ¶ 5. Petitioner reported one day late and was terminated from the ATD program. *Id.* ¶ 6. After Petitioner's October 2022 reporting, he had no encounters with immigration authorities until early 2026.

On January 23, 2026, Petitioner was arrested by the Town Police of Greenburgh, New York. *Id.* ¶ 7. That day, Petitioner was arraigned in Greenburgh Town Court on charges of Grand Larceny in the Fourth Degree: Value Property Greater Than $1000 in violation of New York Penal Law 155.30(1). *Id.* ¶¶ 7-8. Petitioner's next scheduled appearance in Greenburgh Town Court is March 27, 2026. *Id.* ¶ 10.

On February 5, 2026, ICE was notified by Port Chester Village (NY) Police Department that they intended to take custody of Petitioner. *Id.* ¶ 11. That day, ICE issued a Form I-200, Warrant for Arrest of Alien for Petitioner, and a Form I-247A, Immigration Detainer – Notice of

Action. *Id.* The I-247A indicates that DHS determined probable cause exists that Petitioner is subject to removal and the LRA detainer provision at 8 U.S.C. § 1226(c)(3). *Id.*

The next day, Port Chester Police notified ICE that Petitioner was in their custody. *Id.* ¶ 12. While in Port Chester Police custody, ICE interviewed Petitioner with his consent, during which Petitioner admitted he lacked documents permitting his lawful entry, transit through, or presence in the United States. *Id.* A record check by ICE at that time confirmed Petitioner's representation. *Id.* On February 7, 2026, Petitioner was arrested and detained under 8 U.S.C. § 1226(c)(1)(E) and transported to 26 Federal Plaza for further processing. *Id.* ¶ 13.

After Petitioner's arrest, ICE issued a Form I-862 Notice to Appear ("NTA"), which charged Petitioner as an alien present in the United States without being admitted or paroled, or who arrived at any time or place other than as designated by the Executive, in violation of 8 U.S.C. § 1182(a)(6)(C) or (a)(7). *Id.* ¶ 14. The NTA instructed Petitioner to appear for an initial master calendar hearing in immigration court on February 13, 2026. *Id.*

On February 8, Petitioner was transferred to Delaney Hall Detention Center in Newark, New Jersey. *Id.* ¶ 15. And on February 13, 2026, Petitioner was transferred to Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.*

As for Petitioner's removal proceedings, due to his detention transfers, his initial appearance was postponed to February 20, 2026. *Id.* ¶¶ 16-18. Petitioner appeared on that date pro se, and the immigration judge reset the matter for another hearing on March 6, 2026, so that Petitioner would have time to retain counsel. *Id.* ¶ 17. On March 6, 2026, Petitioner appeared with counsel before the immigration court, which adjourned the matter to March 20, 2026, upon Petitioner's request for more time to prepare. *Id.* ¶ 18.

ARGUMENT

There are dispositive facts not in dispute. First, Petitioner is present in the United States

but has never been lawfully admitted, which Petitioner confirms makes him an applicant for admission. ICE Decl. ¶ 4; Am. Pet. ¶ 46; 8 U.S.C. § 1225(a)(1). Second, Petitioner was arrested and arraigned on grand larceny charges in January 2026, and his charges are pending. Am. Pet. ¶ 6; ICE Decl. ¶¶ 7-8. Collectively, those facts mean Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(c)(1)(E).

I. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1225(b)(2)(A)

Respondents' position is that because Petitioner has never been admitted to the United States, he is an applicant for admission (a fact he confirms (*see* Am. Pet. ¶ 46)) who is, therefore, subject to the detention authority in § 1225(b)(2)(A). In *Estrada Alfaro* and *Singh*, when presented with somewhat analogous facts, Your Honor granted the petition for habeas corpus. *Alfaro*, Order (E.D.N.Y. Mar. 13, 2026); *Singh*, Order, (E.D.N.Y. Mar. 13, 2026).

Respondents respectfully disagree with the Court's rulings in those cases. But Respondents acknowledge that if this Court adheres to its conclusions in *Alfaro* and *Singh*, (and even though the detailed decisions in those cases have not issued) the Court would conclude that the detention authority in § 1225(b)(2)(A) does not govern. In an effort to conserve judicial and party resources and to expedite the Court's consideration of this case, Respondents incorporate by reference the arguments on this point in the opposition briefs in *Alfaro*, No. 26-cv-761, ECF No. 6, and *Singh*, No. 26-cv-937, ECF No. 8.[3] Respondents make such acknowledgement while reserving all rights,

[3] At the time of this filing, one district court judge in this District, five other district court judges in this Circuit, and the Fifth Circuit have endorsed the government's interpretation of the relevant statutory provisions.

In *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026), *notice of appeal filed* Feb. 12, 2026, the Honorable Brian M. Cogan concurred with Respondents' statutory construction. *See id.* at *3 ("Since his unlawful entry, petitioner has been, and continues to be, subject to the mandatory detention requirement of Section 1225(b)(2)(A).").

Likewise, in *Yinxiao Chen v. Almodovar*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), the Honorable John P. Cronan endorsed Respondents' interpretation. In *Yinxiao Chen*, the petitioner entered the United States without inspection or legal documents, was arrested and later released on his own recognizance under 8 U.S.C.

including the right to appeal.

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§ 1226, served with a Notice to Appear for removal proceedings, and recently detained under 8 U.S.C. § 1225(b)(2)(A). *See Yinxiao Chen*, 2026 WL 100761 at *5-*6. Judge Cronan denied the habeas petition, concluding that the text, structure, and context of § 1225(b)(2)(A) confirm that statute covers aliens like that petitioner. *Id.* at *8-14. With respect to the text of § 1225(b)(2)(A), Judge Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival ...).'" *See id.* at *8 (emphasis supplied in *Yinxiao Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together, Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*; *accord, Alvarado Quezada v. Francis*, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.).

So too, in *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855, at *3 (S.D.N.Y. Dec. 4, 2025), the Honroable Mary Kay Viskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), which by its terms requires mandatory detention for "applicant[s] for admission," the petitioner—an applicant for admission—was subject to mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855 at *4. In particular, the court cited the statutory definition of "applicant for admission" in Section 1225(a), which "is specifically defined to include an 'alien *present in* the United States who has not been admitted.'" *Id.* (emphasis in *Xiaoquan Chen*) (citing Section 1255(a)). Moreover, the court noted that the terms "'admitted' and 'admission' are specifically defined in terms of '*lawful*' entry," not mere physical entry. *Id.* (emphasis in *Xiaoquan Chen*) (citing 8 U.S.C. § 1101(a)(13)(A)); *accord Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-2 (W.D.N.Y. Dec. 4, 2025) (holding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present in United States unlawfully without having been admitted based on a "a straightforward and fair reading of the governing statute," noting that "[t]he fact that more district courts . . . have decided this issue differently from this [c]ourt is neither binding nor persuasive"), *notice of appeal filed* Dec. 16, 2025. *Xiaoquan Chen* also rejected the proposition that Congress would not have needed to pass the LRA – which provides for mandatory detention for "inadmissible" aliens charged with, arrested for, convicted of, or who admit to, certain crimes – if Section 1225 already provided for mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855, at *6-7. The court explained, *inter alia*, that the LRA mandates detention in additional circumstances – for example, for aliens who fraudulently procure visas – not covered by Section 1225. *Id.*; *accord Arana v. Arteta*, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.) (adopting the reasoning of *Xiaoquan Chen*). On December 15, 2025, Judge Vyskocil issued another decision concluding that the Government's interpretation is correct. *See Liang v. Almodovar*, 2025 WL 3641512, at *4-11 (S.D.N.Y. Dec. 15, 2025) (holding that petitioner who entered the United States without being admitted was properly subject to detention under the plain language of Section 1225, notwithstanding prior release on his own recognizance under Section 1226, and further concluding that petitioner was not entitled to any process beyond that set forth in the statute).

The Honorable Jennifer F. Rearden, in *Weng v. Genalo*, 2025 WL 194248 (S.D.N.Y. Jan. 25, 2026), concluded that the petitioner in that case was subject to § 1225(b)(2)(A) mandatory detention even though ICE had previously released him from detention on a § 1226(a)(2)(B) order of release on recognizance. Judge Rearden noted that Congress in 1996 enacted § 1225(a)(1) and 8 U.S.C. § 1101(a)(13)(A), which together limited the category of those "admitted" to persons who lawfully entered the United States. *Id.* at *3. Thus, persons who entered the United States unlawfully have not been "admitted" and are subject to § 1225(b)(2)(A) mandatory detention. *Id.* Judge Rearden also, *inter alia*, declined to follow the courts that have held § 1226 (a) mandatory detention applies only to persons who are "seeking admission" and thus cannot apply to persons who are already in the United States. She perceptively noted that "the term 'applicant for admission' in Section 1225 is defined to include an 'alien *present* in the United States who has not been admitted," 8 U.S.C. § 1101(a)(13)(A) (emphasis added) and thus explicitly encompasses aliens who are 'already here.' " *Id.* at *4; *accord Espinoza Lopez v. Noem*, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.).

Lastly, the first court of appeals to issue a merits decision interpreting the relevant statutory provisions has agreed with the government's interpretation. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 501-08 (5th Cir. 2026).

II. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(c)(1)(E)

Unlike in those prior cases, however, Petitioner's arraignment on pending charges of grand larceny also places him under the detention authority in 8 U.S.C. § 1226(c)(1)(E). Such detainees (like § 1225(b)(2)(A) detainees) must remain detained for the duration of their removal proceedings without access to a bond hearing, and they may only be released if one of the limited, enumerated circumstances in 8 U.S.C. § 1226(c)(4) are satisfied, which they are not – a fact Petitioner does not contest.

The detention authority in 8 U.S.C. § 1226(c)(1)(E) covers "any alien who-- . . . (i) is inadmissible under [8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7)]; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any . . . larceny." "[T]he term[] . . . 'larceny' . . . ha[s] the meaning[] given such term[] in the jurisdiction in which the act[] occurred." *See* 8 U.S.C. § 1226(c)(2). The Executive "shall take into custody" such aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *See* 8 U.S.C. § 1226(c)(1)(E). "The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien." *See* 8 U.S.C. § 1226(c)(3).

A detainee under § 1226(c)(1) "may" be released "only if . . . release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other

persons or of property and is likely to appear for any scheduled proceeding." *See* 8 U.S.C. § 1226(c)(4).

Here, it is undisputed that Petitioner is an alien inadmissible under 8 U.S.C. § 1182(a)(6)(A) and (a)(7) and was arrested and arraigned on a formal charge of fourth degree grand larceny. *See* ICE Decl. ¶¶ 8-9, 14.[4] His charge for grand larceny is a textual match for a covered crime, and the fact that the charges are pending are a covered posture of his criminal proceedings. *See Rohit Lnu v. Chestnut*, 2026 WL 395882, at *4 (E.D. Cal. Feb. 12, 2026) (collecting cases "constru[ing] the Laken Riley Act to apply only where an individual is currently charged with or arrested for the enumerated crimes.") *report and recommendation adopted*, 2026 WL 623148 (E.D. Cal. Mar. 5, 2026).[5] Thus, Petitioner is subject to the detention authority in 8 U.S.C. § 1226(c)(1)(E). DHS, therefore, "shall issue a detainer" for him – which it did – and he "shall" be "take[n] into custody" – which he was.

Petitioner does not have access to a bond hearing under § 1226(c). As § 1226(a) confirms, its bond procedures apply "[e]xcept as provided in subsection (c)." *See* 8 U.S.C. § 1226(a). Rather, for Petitioner, he may be released only for the reasons enumerated in 8 U.S.C. § 1226(c)(4).

The Second Circuit has squarely confirmed that Petitioner is covered by § 1226(c). In *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert petition filed*, No. 25-886 (Jan. 22, 2026), the Second Circuit, in reaching the question of how long aliens may be detained under § 1226(c) without further process, concluded that "noncitizens who have committed one of certain listed offenses . . . are subject to mandatory detention." *See* 103 F.4th at 140-41. "The 'Attorney General *shall* take into custody' any such noncitizen." *Id.* at

[4] Petitioner claims he is detained "based solely on an arrest." *See* Am. Pet. ¶ 9. But that is inaccurate. Petitioner was also arraigned on formal charges before he was detained by ICE. *See* ICE Decl. ¶ 8.

[5] Some courts have held that § 1226(c)(1)(E) does not apply where covered charges were dropped by the time the petitioner was detained. *See, e.g., Sidqui v. Almodovar*, 2026 WL 251929, at *12 (S.D.N.Y. Jan. 30, 2026).

141. Their release is "allow[ed] . . . in extremely limited circumstances: only" under the provision now codified at 8 U.S.C. § 1226(c)(4). *Id.* Such detention "*must* continue 'pending a decision on whether the alien is to be removed from the United States." *Id.* at 142 (citing *Jennings*, 583 U.S. at 303).

III. PETITIONER'S DETENTION COMPORTS WITH PROCEDURAL DUE PROCESS

Petitioner nonetheless claims that his detention is unlawful on two bases. First, it allegedly violates procedural due process because his "arrest and detention . . . without an opportunity . . . to contest his detention in front of a neutral decisionmaker . . . provide insufficient process." Am. Pet. at 16.

At the threshold, Petitioner inaccurately describes multiple facts regarding the process he has and will receive. First, Petitioner claims he "has received no due process as to his criminal arrest[]." *See* Am. Pet. ¶ 38. But in his criminal case, Petitioner was arrested *and* he was arraigned and formally charged with grand larceny in Greenburgh Town Court. He does not identify any criminal process deficient under New York law.

Second Petitioner claims "he will not be able to appear before the Greenburg[h] Town Court[] and will be unable to resolve his pending criminal matter" while he is in ICE detention. *See* Am. Pet. ¶ 7. But if the Greenburgh Town Court provides ICE with a writ to produce Petitioner for a hearing, ICE will comply. *See* ICE Decl. ¶ 9.

Third, Petitioner argues he has received "no due process as to his . . . immigration detention." *See* Am. Pet. ¶ 38. But Petitioner has received substantial process before the immigration court in his removal proceedings, including access to counsel and hearings. *See* ICE Decl. ¶¶ 17-18. And if Petitioner believes he is not covered by the § 1226(c)(1)(E) detention authority, he may challenge that at a *Joseph* hearing. *See Black*, 103 F.4th at 152.

With those threshold facts established, in sum, under decades of Supreme Court precedent, as an alien who has not been admitted, the process Petitioner is due is the process Congress provided. Because the governing statutes do not permit bond hearings, the lack of a bond hearing is not a procedural due process violation. Even if this Court holds that the *Mathews* due process balancing test governs, the result is the same under Second Circuit precedent *Black v. Decker*: Petitioner's detention to date without a bond hearing does not violate procedural due process.

A. An Applicant For Admission Is Due Only The Process Congress Provides, Which Petitioner Received Under § 1226(c)(1)(E)

To state a procedural due process claim, Petitioner must establish: a cognizable liberty or property interest, and a deprivation of that interest without due process. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). This claim fails because for applicants for admission, the process Congress provides suffices for due process too. That is what Petitioner received, so he has not been deprived of due process.

Because Petitioner is an applicant for admission (which he confirms, Am. Pet. ¶ 46), he is treated for constitutional purposes as if stopped at the border. Even aliens, like Petitioner, "released" to the interior of the country are "considered to be 'at the threshold of initial entry' for immigration purposes pursuant to the so-called 'entry fiction.'" *See Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (S.D.N.Y. 2020) (citing *Zadvydas*, 533 U.S. at 693). Such aliens, "who have been denied admissions to the United States yet are present within its borders[,] are 'treated, for constitutional purposes, as if stopped at the border.'" *Id.* (citing *Zadvydas*, 533 U.S. at 693). Thus, "although [Petitioner] was in the United States for [over three years] prior to his detention, he is properly treated 'as if stopped at the border' as an arriving alien for purposes of the due process analysis." *Id.* (citing *Zadvydas*, 533 U.S. at 693).

For such aliens, 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." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *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"). More than a century of Supreme Court precedent confirms that applicants for admission are among those aliens treated as if stopped at the border for due process purposes. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, 591 U.S. at 139-40. The Court explained, "[w]hen an alien arrives at a port of entry — for example, an international airport — the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. The Court was clear: "the Due Process Clause provides nothing more" than the process Congress provides. *Id.*

"[E]ven [aliens] paroled elsewhere in the country for years pending removal [] are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). Courts have applied such due process rubric to aliens who have "entered," even in cases where the alien developed significant ties to this country. *See e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (a disabled girl present for nine years must be "regarded as stopped at the boundary line"); *Mezei*, 345 U.S. at 214–215 (an alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"); *see also, e.g.*, *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d. 200, 219-21 (S.D.N.Y. 2020) (alien previously

released from custody but not lawfully admitted was still considered "at the threshold of initial entry" over one year later); *Salim v. Tryon*, 2014 WL 1664413, *2 (W.D.N.Y. Apr. 25, 2014) ("The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings."); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (paroleee continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due process amounts to whatever the procedure authorized by Congress is"); *D.A.V.V. v. Warden, Irwin County Detention Center*, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) ("arriving aliens' procedural due process rights entitle them only to the relief provided by the INA"); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applicant for admission is not entitled to procedural protections beyond those provided by statute).

Turning to what process Congress provided, Petitioner must be detained during ongoing removal proceedings, as discussed above. *See* 8 U.S.C. § 1226(c)(1)(E). Unlike admitted aliens later placed in removal proceedings, applicants for admission are "request[ing] a privilege," *Landon v. Plasencia*, 459 U.S. 21, 32 (1982), and therefore "stand[] on a different footing," *Mezei*, 345 U.S. at 212. Thus, Petitioner's due process being coextensive with the process Congress provided in § 1226(c)(1)(E) flows from his lack of admission and criminal record. "[B]ecause the immigration statutes at issue [ ] do not authorize a bond hearing, *Mezei* dictates that due process does not require one." *Poonjani*, 319 F. Supp. 3d at 649.

B. Petitioner Was Not Entitled To A Bond Hearing When His Detention Began

In favor of due process entitling him to a bond hearing, *first*, Petitioner argues that the Court's adjudication is not governed by the doctrine that the process due is the process Congress provides. Instead, in Petitioner view, it is governed by *Black*'s holding, *see* 103 F.4th at 147-48, that the three-factor test in *Mathews* governs whether legal permanent residents detained for many

months under § 1226(c)(1) without a bond hearing were entitled to one at that later juncture. *See* Am. Pet. ¶¶ 53-59.[6]

Black's holding regarding when a due process challenge to a § 1226(c)(1) detention is governed by *Mathews* does not govern this case at this juncture. As Petitioner concedes, *Black* applied the "*Mathews* factors to [a] due process challenge to *prolonged* detention under Section 1226(c)" without a bond hearing, which in that case was approximately a six-month detention. *See* Am. Pet. ¶ 53. Only at that point does a due process challenge to a § 1226(c)(1) detention without a bond hearing get adjudicated under *Mathews*.

By contrast, here, Petitioner contends the *Mathews* test governs the constitutionality of his "arrest and detention" at the moment it began, and that it violated due process from the outset for lacking "an opportunity for [Petitioner] to contest his detention." *See* Am. Pet. at 16. But *Black* confirmed that the *Mathews* test does not govern a due process challenge to § 1226(c)(1) detention at its beginning. In discussing the Government's detention authority under 8 U.S.C. § 1226(c), *Black* summarized Supreme Court precedent holding that "detention under [§] 1226(c) without an *initial* bond determination does not, on its face, violate the detainee's due process rights where detention is 'for the limited period of . . . removal proceedings.'" *See* 103 F. 4th at 141 (citing *Demore*, 538 U.S. at 531). In reaching that conclusion, *Black* cited *Demore*, in which the Supreme Court upheld § 1226(c) detention without applying the *Mathews* framework. *See id.*[7]

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[6] "The Supreme Court in *Mathews* identified three factors bearing on the constitutional need for procedural protections: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *See Black*, 103 F.4th at 147.

[7] Respondents are cognizant that in *Estrada Alfaro* and *Singh*, the Court held that the petitioners' detention there "w[ere] governed by 8 U.S.C. § 1226," and they violated due process for lack of a bond hearing "in view of the considerations set forth in *Mathews*" – and that the Court did not more precisely state that it held those petitioners' detention were governed specifically by § 1226, subsection (a). But Respondents' respectfully submit that such orders, which the Court confirmed will be followed by "forthcoming memorandum" that will set forth the Court's reasoning

Second, Petitioner argues his detention without a bond hearing violates due process because he has only been arrested and charged with a covered crime, not convicted, which he argues distinguishes his case from others that have upheld the constitutionality of a § 1226(c) detention without a bond hearing where the alien was convicted of a covered crime. *See* Am. Pet. ¶ 36. In Petitioner's view, the fact that he has not been convicted means there is a chance he is erroneously detained under § 1226(c)(1)(E); and he presents zero flight risk or danger to the community, so the Government lacks an interest in detaining him. *Id.* ¶¶ 39-40.

But this is an argument under the *Mathews* factors, so it fails because Petitioner's due process right is not governed by *Mathews*. It also fails because it is, in substance, not a due process argument at all, but rather raising the possibility as a matter of statute that Petitioner is not covered by the detention authority in § 1226(c)(1)(E). If Petitioner believes he is not covered by the § 1226(c)(1)(E) detention authority because his case does not present a covered crime or a covered criminal posture, he may challenge that at a *Joseph* hearing, *see Black*, 103 F.4th at 152, though Respondents' position, for the reasons described above, is that Petitioner is covered by § 1226(c)(1)(E).

If construed as a due process argument, it fails on the merits too. Petitioner cites no controlling authority – indeed, no authority at all from within this Circuit – for the proposition that detaining an alien under § 1226(c)(1)(E) based on an arrest and pending criminal charges without a conviction yet secured offends due process. Instead, he cites (Am. Pet. ¶ 39) *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. Sept. 5, 2025), where one district judge indeed held that a § 1226(c)(1)(E) detention without a bond hearing violated due process. But that case presents markedly different facts regarding the chance of erroneous deprivation of liberty and government

"more fully," do not mean the Court has decided that *Mathews* governs a claim by a § 1226(c) detainee that the lack of a bond hearing at the beginning of his detention violates due process.

interests. *Doe* involved a teenager who had previously been granted Special Immigrant Juvenile status and was arrested for shoplifting but *never charged* in the two months between his arrest and the court granting his habeas petition. *See* 800 F. Supp. 3d at 207-08. By contrast, Petitioner is twenty-two years old and was arrested *and arraigned* on fourth degree grand larceny charges. *Doe* is also out-of-circuit and has been rejected by at least one other court in its district. *See Vasquez v. Moniz, et al.*, No. 25-cv-13371-RGS, ECF No. 14 (D. Mass. Dec. 9, 2025) ("The court disagrees and declines to follow the reasoning of the district court in *Doe v. Muniz*"); *see also Urena v. Plymouth County Correctional Facility, et al,* No. 25-cv-13352-JEK, Order dated Dec. 9, 2025 (D. Mass. Dec. 9, 2025) (denying habeas petition, holding that "detention is required by Section 1226(c) and comports with due process").[8]

C. Even Under The (Inapplicable) *Mathews* Factors, Petitioner's Detention Comports With Due Process

Ultimately, if the Court were to consider the *Mathews* factors, they underscore that Petitioner has not established a due process violation. Concerning the risk of erroneously depriving Petitioner of his liberty because he has yet to have access to a bond hearing, that is low. Petitioner does not seriously dispute that his pending fourth degree grand larceny charge is not a covered crime and covered posture under § 1226(c)(1)(E); if he did, he immediately has available to him a *Joseph* hearing; and if he remains detained for a "prolonged" time on the present posture, he may seek habeas relief at that later juncture under *Black*, arguing that his detention has become "prolonged" and the lack of a bond hearing by that time violates due process. *See Calderon v. Noem*, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025) (denying habeas petition where the

[8] Petitioner also cites *Lares v. Bondi, et al.*, No. 1:25-cv-1562 (E.D. Va. Oct. 29, 2025). But that case held that the Petitioner was not covered by § 1226(c)(1)(E) because his charges were not pending at the time he was detained. *See* ECF No. 18 at 9-10. It expressly did not decide whether that petitioner's § 1226(c)(1)(E) detention violated due process because it held he was not covered by that statute to begin with. *Id.* at 9.

LRA "undisputed[ly]" applied, Petitioner could seek relief under *Joseph*, and a bond hearing could be available at a later date under *Black*). There is, therefore, little to no risk Petitioner's liberty is presently erroneously deprived now.

And with respect to the Government's interest in detaining Petitioner, the government's interest is in ensuring Petitioner's appearance at his removal proceedings to properly adjudicate his removal, ensuring he is removed if that is the outcome of his removal proceedings, and protecting the community from the danger posed by aliens who are charged with the crimes Congress determined renders them subject to mandatory detention. Such "interests are legitimate and their importance well-established." *See Black*, 103 F.4th at 153 (citing *Demore*, 538 U.S. at 518-521); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (the government "has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'") (quoting *Demore*, 538 U.S. at 518). "Enforcement of our immigration law serves both a domestic law enforcement and foreign relations function." *See Rodriguez Diaz*, 53 F.4th at 1208 (citing *Landon*, 459 U.S. at 34). Those "legitimate interests justify" the "relatively short-term deprivation of liberty" Petitioner has experienced to date. *See Black*, 103 F.4th at 154.

IV. PETITIONER'S DETENTION DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS BECAUSE IT DOES NOT SHOCK THE CONSCIENCE

Petitioner alleges his detention violates substantive due process because, as he alleges, he is not a flight risk or danger to the community. *Id.* at 15. But Petitioner's detention for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights either.

A substantive due process claim must allege governmental conduct that 'is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005) (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8

(1998)). Conduct is conscience-shocking only if it was "intended to injure in some way unjustifiable by any government interest." *Lewis*, 523 U.S. at 849. Where no fundamental right is at stake, "governmental regulation need only be reasonably related to a legitimate state objective." *Goe v. Zucker*, 43 F.4th 19, 30 (2d Cir. 2022) (internal quotation omitted).

No court has ever held that an alien not lawfully admitted to the United States holds a fundamental right to remain at liberty in the United States. To the contrary, "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings"). That is because "an applicant for initial entry has no constitutionally cognizable liberty interest in being permitted to enter the United States." *Rafeedie v. INS*, 880 F.2d 506, 520 (D.C. Cir. 1989). Removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure.").

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

CONCLUSION

For the reasons stated herein, the Petition should be denied.

Dated: Brooklyn, New York
March 16, 2026

Respectfully submitted,

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