UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

LUIS A. MURILLO-ABREGO,

Petitioner,

v.

U.S. ATTORNEY GENERAL PAMELA BONDI; U.S. DEPARTMENT OF HOMELAND SECURITY SECRETARY KRISTI NOEM; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ACTING DIRECTOR TODD LYONS; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ACTING DEPUTY NEW YORK FIELD OFFICE DIRECTOR BRIAN FLANAGAN,

Civil Action No.
26-cv-1358 (RPK)

Respondents.

----------x

RESPONDENTS' RETURN TO THE HABEAS PETITION

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

March 15, 2026

LAYALIZA SOLOVEICHIK
ALEXANDRA MEGARIS
Assistant United States Attorney
(Of Counsel)

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 3

I. Statutory And Regulatory Framework 3

A. Before 1996, Aliens Who Surreptitiously Entered The Country Had More Rights And Protections Than Aliens Who Presented At A Port Of Entry 3

B. Congress Eliminates Preferential Treatment For Aliens Who Unlawfully Entered And Mandates Detention Of All "Applicants For Admission" 4

II. Petitioner's Relevant Administrative History 8

ARGUMENT 10

I. Petitioner's Detention Is Lawful Under The INA 10

A. Petitioner Is Lawfully Detained Under Section 1225(b)(2) 10

1. The Text of Section 1225(b)(2) Shows That Statute Covers Petitioner 10

2. Supreme Court, Circuit Court, And District Court Authority Confirm That Petitioner Is Covered By Section 1225(b)(2) 12

B. Petitioner's Arguments Why He Is Covered By Section 1226 Fail, And Decisions Reaching That Conclusion Ignore Congress's Mandate 15

II. Petitioner's Detention Comports With Due Process 21

III. The APA Claim Is Improper 25

CONCLUSION 25

PRELIMINARY STATEMENT

Respondents, by their attorneys Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Layaliza Soloveichik and Alexandra Megaris, Assistant United States Attorneys, of counsel, respectfully submit this return to the Petition for a Writ of Habeas Corpus.

Petitioner, an El Salvadoran, alleges that for two decades he has successfully evaded detection after unlawfully crossing into the United States in 2006. He recently filed an asylum application with U.S. Citizenship and Immigration Services ("USCIS"), and owing to its pendency, secured a work authorization in August 2025, but it is unclear how he has supported himself lawfully for the last 20 years without such authorization. Last week, *i.e.*, 20 years after he entered the United States, was the first time he was encountered by either Customs and Border Protection ("CBP") or Immigration and Customs Enforcement ("ICE"). ICE assessed that Petitioner had never been admitted -- which he does not dispute -- placed him in removal proceedings under 8 U.S.C. § 1229a, and detained him during their pendency under 8 U.S.C. § 1225(b)(2)(A). He challenges his detention during the pendency of those removal proceedings.

He argues, in effect, that his success in evading detection by CBP upon sneaking in -- and by ICE for two decades afterward– somehow accrues to his benefit. To wit, he wants discretionary detention and bond hearings under 8 U.S.C. § 1226(a), instead of subjection to mandatory detention required under § 1225(b)(2)(A) for non-admitted aliens in removal proceedings.

His argument flies in the face of the 1996 reforms made by Congress to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, which eliminated the dichotomy that had existed between aliens who presented at ports of entry without papers and were subject to mandatory detention, and those who had sneaked in unlawfully and were, upon being encountered, afforded bond hearings. After the reforms, the INA mandated that all aliens not admitted who entered the United States unlawfully – even outside ports of entry -- were deemed "applicants for

admission" under 8 U.S.C. § 1225(a)(1). Such aliens, if not placed in mandatory detention for expedited removal under 8 U.S.C. § 1225(b)(1)(A)(1) (on which Congress placed a two-year limit from initial encounter), were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) while removal proceedings under 8 U.S.C. § 1229a were underway. In requiring detention until a removal determination, Congress placed no time limit or geographic limit on § 1225(b)(2)(A).

Indeed, had Petitioner been encountered and placed in removal proceedings under 8 U.S.C. § 1229a by CBP close to the border, even Petitioner would presumably not dispute that § 1225(b)(2)(A) would mandate his detention. He thus pins his argument on his ongoing undetected presence 20 years after he purportedly first unlawfully entered, but his ability to remain under the radar is not the panacea Petitioner plainly wishes it were. In fact, in *Samaashvili v. Flanagan,* No. 25-6178, 2026 WL 377574, at *2-3 (E.D.N.Y. Feb. 11, 2026), *on appeal,* the Honorable Brian M. Cogan noted that when the alien "first crossed the [U.S.] border, he was certainly an applicant for admission" subject to § 1225(b)(2)(A) mandatory detention, and his illicit presence in the United States thereafter while in removal proceedings did not magically transmogrify his status: "[s]ince his unlawful entry, petitioner has been, and continues to be, subject to the mandatory detention requirement." *Id.* Other judges within this Circuit have similarly so held, as has the only circuit to rule so far on this issue, the Fifth Circuit Court of Appeals.[1]

---

[1] *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Palma v. Arteta,* 2026 WL 697015 (S.D.N.Y. Mar. 13, 2026) (Cronan, J.); *Velasquez v. Noem*, 2026 WL 621690 (S.D.N.Y. Mar. 5, 2026) (Woods, J.); *Chen v. Almodovar*, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Flores Pacheco v. Almodovar*, 2026 WL 366994 (S.D.N.Y. Feb. 10, 2026) (Cronan, J.); *Alvarado Quezada v. Francis*, No. 26-387, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Acosta v. Arteta*, No. 25-9916, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Espinoza Lopez v. Noem*, No. 26-345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Perez Quintero, v. Francis*, No. 25-10107, 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Gudino v. Almodovar*, 2026 WL 251887 (S.D.N.Y. Jan. 30, 2026) (Vyskocil, J.); *Weng v. Genalo*, No. 25-09595, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25-9322, 2025 WL 3641512 (S.D.N.Y. Dec.15, 2025) (Vyskocil, J.), *on appeal; Chen v. Almodovar*, No. 25-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *on appeal.* An expedited appeal before the Second Circuit is fully-briefed, with oral argument set for April 6, 2026, in *Da Cunha v Moniz,* No.25-3141 (2d Cir.).

Petitioner thirsts for a bond hearing before an immigration judge ("IJ"), or better yet, for immediate release without resort to an IJ, and asserts four claims arising from one act: his mandatory detention by ICE under § 1225(b)(2)(A), as an applicant for admission, instead of being afforded the IJ bond hearing that applies to those already admitted under 8 U.S.C. § 1226(a). He asserts that this violates the INA and both procedural and substantive due process, and is capricious under § 706(2)(A) of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-06.

His claims collapse into each other and warrant dismissal. His INA construction is defective, as § 1225(b)(2)(A)indeed mandates his detention. His procedural due process claim lacks merit, as an alien not admitted is afforded only the process Congress provides by statute, which is mandatory detention under § 1225(b)(2)(A). His claim that Respondents violated substantive due process fares no better, because his grievance arises from ICE enforcing the same statute. Finally, the APA claim is not viable because a habeas action provides his only remedy.

In sum, the Petition should be denied.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY FRAMEWORK

For more than a century, Congress has authorized immigration officials to arrest and detain certain aliens subject to removal until their removal proceedings conclude with admission or removal. *See Abdel v. United States*, 362 U.S. 217, 233-34 (1960). Over time, the aliens those laws cover, the scope of the authority to detain, and the avenues for release have evolved. But it has remained true that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process" *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

A. Before 1996, Aliens Who Surreptitiously Entered The Country Had More Rights And Protections Than Aliens Who Presented At A Port Of Entry

Before 1996, aliens at a port of entry who could not demonstrate entitlement to admission were placed in "exclusion proceedings" and were subject to mandatory detention without the possibility of bond. *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010); *Saamishvili,* 2026 WL 377574, at *1-2; *Buenrostro*, 166 F.4th at 498, 508; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025)[2]; *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995). In contrast, aliens who evaded authorities and entered the United States by sneaking across the border were placed in "deportation" proceedings and taken into custody but could request release on bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hing Sum*, 602 F.3d at 1100; *Hurtado*, 29 I. & N. Dec. at 223. Thus, 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*, 602 F.3d at 1099; *Buenrostro*, 166 F.4th at 498, 508.

The pre-1996 INA framework, however, 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; *Saamishvili,* 2026 WL 377574, at *1-2; *Buenrostro*, 166 F.4th at 498, 508.

B. Congress Eliminates Preferential Treatment For Aliens Who Unlawfully

[2] A district judge in the Central District of California recently purported to vacate the BIA's statutory construction in *Hurtado* as to §§ 1225(b)(2)(A) and 1226(a). *See Maldonado Bautista*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). The Government sought a stay pending appeal. *See Maldonao Bautista v. Santacruz, et al.*, No. 26-1004, Dkt. No. 3.1 (9th Cir. Feb. 26, 2026). 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' statutory construction is consistent with *but* independent of *Hurtado*.

Entered And Mandates Detention Of All "Applicants For Admission"

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), that dispensed with the earlier dichotomy. As relevant here, Congress declared "an alien *present* in the United States who has *not been admitted* ... shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). Congress also defined "admission" with by adding a new modifier to entry: "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added).

Thus, whereas the INA had previously separated aliens who had "enter[ed]" unlawfully from aliens who were being inspected at a port of entry but found inadmissible, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," including aliens who are already present in the United States but did not enter lawfully." *Chen*, 2025 WL 3484855, at *3. This new categorization "ensur[ed] 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); *accord Saamishvili,* 2026 WL 377574, at *2 ("Post-IRRIRA, 'both aliens arriving at the border and aliens present in the United States without inspection are deemed 'applicants for admission'... who must be 'inspected by immigration officers' to determine their admissibility") (citing *Cruz-Miguel v. Holder,* 650 F.3d 189, 197 (2d Cir. 2011)); *Buenrostro*, 166 F.4th at 499, 508 ("Its seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants").

The INA now defines "applicants for admission" not only as "an alien present in the United States who has not been admitted," 8 U.S.C. § 1225(a)(1), but also as a subset of persons "seeking admission". *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission

or *otherwise* seeking admission . . . shall be inspected by immigration officers") (emphasis added); *Chen*, 2026 WL 100761. These applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). If applicants for admission are not deemed admissible upon such inspection, they then 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 who have "not been admitted or paroled into the United States," and also, 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); 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii).[3]

Section 1225(b)(2) is a "catchall" covering "all applicants for admission not covered by

[3] The immigration officer must "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." 8 U.S.C. § 1225(b)(1)(A)(i). An asylum officer offers a credible fear interview, and if unfavorable, further process is afforded via review by an IJ. 8 U.S.C. § 1225(b)(1)(B)(i),(iii)(III); 8 C.F.R. § 235.3(b)(4). In that event, the alien "shall be detained pending a final determination of credible fear of persecution and, if found not to have such fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4). 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). However, if an alien arrives at the border and is subject to expedited removal, but expresses an intention to apply for asylum and subsequently *passes* a credible fear interview, then that asylum application may be reviewed by an IJ in removal proceedings instituted under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 1208.30(g)(2)(iv)(B); 8 C.F.R. § 208.30(f). The alien remains subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii): "the alien shall be detained for further consideration of the application for asylum." *See also Jennings*, 583 U.S. at 297 (the statute does not authorize bond hearings or release on bond); *Matter of M-S-*, 27 I&N Dec. 509, 515-19 (2019)) (IJs "lack authority to hear a bond request" arising out of applicants for admission subject to § 1225(b)(1)").

§ 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)[4]; 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"); *Chen*, 2025 WL3484855, at *3 (§ 1225(b)(2)(A) detention is "mandatory"). Aliens may seek relief from removal, including by seeking asylum from the IJ, during removal proceedings.

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 to detention under either 1225(b)(1) or (2) provision is discretionary parole under 8 U.S.C. § 1182(d)(5)(A). *Jennings,* 583 U.S. at 288. At its sole discretion, the Secretary "may ... in [his] discretion parole into the United States temporarily under such conditions as he may prescribe." 8 U.S.C. § 1182(d)(5)(A). However, Congress provided that 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) ("shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States"); *accord* 8 U.S.C. § 1101(a)(13)(B) ("An alien who is paroled under section 1182(d)(5) of this title ... shall not be considered to have been admitted.").

A neighboring statute, 8 U.S.C. § 1226(c), also provides for mandatory detention during

[4] 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 arrive on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

removal proceedings for certain aliens and lacks this humanitarian parole option. Specifically, 8 U.S.C. § 1226(c), as amended by the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025), covers aliens with certain criminal history. *Jennings,* at 287-89. Here, Congress permitted release only if 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 (quoting then-8 U.S.C. § 1226(c)(2), now codified at (c)(4)). To § 1226(c), the LRA added § 1226(c)(1)(E)(i) and (ii), and (c)(2) and (3). Under the LRA, an alien who is inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7), and is charged with, arrested for, or convicted of, specified types of crimes, shall be detained by DHS "if not otherwise detained by Federal, State, or local officials." Such an alien is ineligible for § 1182(d)(5) parole and may only be released for the limited set of reasons in § 1226(c)(4). *Buenrostro,* 166 F. 4th 505 & n.12.

II. PETITIONER'S RELEVANT ADMINISTRATIVE HISTORY

A. Petitioner Sneaks Across the Border and Evades Detection for Two Decades

Petitioner Luis A. Murillo-Abrego is an El Salvadoran national. *See* Declaration of Spiro Vandoros, dated March 15, 2026 ("Vandoros Decl.") ¶ 2; Petition ¶ 1. Petitioner himself asserts that he entered the United States two decades ago, in August 2006. Petition ¶ 1.

However, DHS does not know how or when Petitioner entered the United States. *Id.* ¶ 4. Neither CBP nor ICE was previously aware of Petitioner, who had remained undetected by both agencies at the border and thereafter, until ICE encountered him last week, March 7, 2026. Vandoros Decl. ¶ 4; Petition ¶ 2 (admitting he had not previously been encountered).[5]

[5] DHS records reflect that Petitioner was never inspected, admitted, or paroled by any DHS agency (to wit, DHS or its component agencies USCIS, CBP, or ICE). Vandoros Decl. ¶ 4, 12. The only applications he has filed are an asylum application (Form I-589) with USCIS – and that only in December 2024 -- still pending, and one for work authorization (Form I-765) with USCIS based on that pendency, 8 C.F.R. § 208.7(a)(1); Vandoros Decl. ¶ 4-5.That work authorization was granted in August 2025; he had not previously obtained work authorization. *Id.* ¶ 5. It is unclear how Petitioner lawfully earned a living for 20 years while living in the United States.

On March 7, 2026, ICE Officers encountered Petitioner in Westbury, New York, during a targeted traffic enforcement operation. Vandoros Decl. ¶ 3. ICE Officers observed a vehicle with a license plate with the registered owner listed as Petitioner, who, according to a records check conducted by the officers, has no lawful status in the United States. Vandoros Decl. ¶ 3. ICE Officers in highly visible markings approached Petitioner and Petitioner provided a driver's license as identification. Vandoros Decl. ¶ 3. The officers confirmed Petitioner's identity. Vandoros Decl. ¶ 3. ICE issued a Form I-200, Warrant of Arrest, for his arrest on the scene and Petitioner was arrested for the purpose of placing him into removal proceedings and he was transported to the Nassau County ICE Intake Processing Center. Vandoros Decl. ¶ 6.

On the same day, he was also served with a Notice to Appear ("NTA"), charging him as inadmissible pursuant to INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], as an alien present in the United States without being admitted or paroled, or who arrived in the United State at a time or place other than as designated by the Attorney General. Vandoros Decl. ¶ 6; 8 C.F.R. § 235.6.

B. **Petitioner, Placed in Removal Proceedings, Is Detained under § 1225(b)(2)(A)**

On the same day, March 7, 2026, ICE filed the NTA with the Executive Office for Immigration Review ("EOIR"), the federal agency that houses IJs and the Board of Immigration Appeals, thereby commencing removal proceedings against Petitioner. Vandoros Decl. ¶ 7.

The NTA directed him to appear for a hearing before an Immigration Judge on March 17, 2026, at Varick Street Immigration Court, New York, New York. Vandoros Decl. ¶ 8.

On March 7, 2026, Petitioner was transported to Nassau County Correctional Center. Vandoros Decl. ¶ 9. On March 10, 2026, Petitioner was transported to Delaney Hall Detention Facility where he is currently detained. Vandoros Decl. ¶ 10.

ICE has assessed that it is detaining Petitioner pursuant to INA § 235(b)(2)(A) [8 U.S.C. §

1225(b)(2)(A)]. Vandoros Decl. ¶ 11. At no time has Petitioner been admitted to the United States. Vandoros Decl. ¶ 12.

ARGUMENT

I. PETITIONER'S DETENTION IS LAWFUL UNDER THE INA

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

1. The Text of Section 1225(b)(2) Shows That Statute Covers Petitioner

Petitioner entered the country unlawfully, was apprehended on being encountered by ICE last month, was placed in removal proceedings, and he has never been admitted to the United States. *See* Vendoros Decl. ¶¶ 2-4,12.

By statute, such undisputed facts make Petitioner an "applicant for admission," as that term covers aliens "present in the United States" who "ha[ve] not been admitted." *See* 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109. Under 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission," such as Petitioner, "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 removal proceeding under 8 U.S.C. § 1229a. No immigration officer has determined "clearly and beyond a doubt" that Petitioner is "entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A); Vendoros Decl. ¶ 12. Petitioner fails to deny this. Therefore, Petitioner must be detained under § 1225(b)(2)(A).

As this Court and others have held, Petitioner's detention under § 1225(b)(2)(A) accords with the "natural reading" of the statute, "consistent with IIRIRA's purpose." *See Saamishvili,* 2026 WL 377574, at *2. Congress made clear that "applicant for admission" is a subset of those who are "seeking admission" in two provisions neighboring § 1225(b). First, § 1225(a)(3) 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). Being an applicant

for admission is thus a particular way of seeking admission, such as the former is a subset of the latter. *See also Chen*, 2026 WL 100761, at *9.

Neither the length of Petitioner's unlawful presence nor his distance from the border alters that as an "applicant for admission" he is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to," for example, in 8 U.S.C. § 1225(b)(1). *Mejia Olalde v. Noem*, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025). So, "[i]f Congress meant to say" in § 1225(b)(2)(A) "that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not for § 1225(a)(1). To the contrary, § 1225(a)(1)'s inclusion of 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. 8 U.S.C. § 1225(a)(1). As a result, "many people who are not *actually* requesting to be admitted to the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (emphasis in original).

None of this is to say that "seeking admission" has no meaning beyond "applicant for admission." For example, lawful permanent residents returning to the United States are not "applicants for admission" but they still may be "seeking an admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). Reading § 1225(b)(2)(A) to mandate detention for "applicant[s] for admission," such as Petitioner, accords with the text Congress enacted in IIRIRA. As relevant here, § 1225(b)(2)(A) places Petitioner under its ambit as an "applicant for admission," and requires the alien "shall be detained" pending the outcome of removal proceedings. *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").

2. Supreme Court, Circuit Court, And District Court Authority Confirm That Petitioner Is Covered By Section 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.").[6]

The Fifth Circuit – the only Circuit Court to decide this issue on the merits to date – confirmed Respondents' reading that § 1225(b)(2)(A) covers applicants for admission, like Petitioner, regardless of when or how they entered the country, which is consistent with "eliminating the exclusion/deportation dichotomy." *See Buenrostro*, 166 F.4th at 499, 508. As the Fifth Circuit held, "that prior Administrations decided to use less than their full enforcement authority… does not mean they lacked the authority to do more." *Id.* at 507-08. For such aliens

---

[6] *Jennings* did not rule on whether non-admitted or inadmissible aliens fell within § 1226(a) as opposed to § 1225(b)(2)(A). Rather, it held that the duration of detention under either provision is not limited to a six-month time limit as the Ninth Circuit had held. *Jennings*, 583 U.S. at 292, 296-306. In doing so, it discussed these provisions in a way that is consistent with Respondents' argument.

It is true that in reaching its holding regarding the absence of a need for a six-month time limit, *Jennings* summarized § 1226 as applying to aliens "already in the country," 583 U.S. at 289, and elsewhere characterized that provision as applying to aliens "once inside the United States," *id.* at 288. But such language does not stand for the proposition that § 1226 is the *sole* detention authority for *every* "alien[] already in the country," inasmuch as in that very section *Jennings* refers to § 1226(a) as applying to aliens "present in the country" specifically who are removable under 8 U.S.C. § 1227(a), a provision that applies *only* to previously admitted aliens. 583 U.S. at 288. That characterization, that § 1226(a) applies to admitted aliens, is in fact Respondents' argument. Respondents argue that those not admitted do not *become* admitted simply by dint of their presence, but also that many aliens present are also admitted, and those are the aliens who are subject to 8 U.S.C. § 1226(a). *Buenrostro*, 166 F.4th at 500 (1226(a) "covers numerous grounds … including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable or were improperly admitted").

not otherwise covered by § 1225(b)(1), § 1225(b)(2)(A) requires detention. *Id.*

Judge Cogan's *Saamishvili* decision is consistent with the Supreme Court and the Fifth Circuit. In *Saamishvili*, Judge Cogan rejected a habeas petition filed by an alien present without being admitted who was detained under § 1225(b)(2)(A), holding that under the "natural reading" of the statutes, and "consistent with IIRIRA's purpose," § 1225(b)(2)(A) "applies to all aliens who entered the United States without inspection." *See* 2026 WL 377574 at *2. As Judge Cogan recognized, "applicants for admission" include "'both aliens arriving at the border and aliens already present in the United States without inspection.'" *See id.* *2 (quoting *Cruz-Miguel*, 650 F.3d at 197). Such aliens "must be inspected by immigration officers to determine their admissibility" under 8 § 1225(a)(3). *See id.* (quoting *Cruz-Miguel*, 650 F.3d at 197 (citing 8 U.S.C. § 1225(a)(3)). And when inspected, "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." 8 U.S.C. § 1225(b)(2)(A). That is the outcome, Judge Cogan held, regardless of where the alien is encountered or how long he has been here, after his "unlawful entry," he "continues to be[] subject to the mandatory detention requirement of § 1225(b)(2)(A)." *Id.* at *2-*3.

Likewise, in *Chen,* the Honorable Mary K. Vyskocil rejected a habeas petition filed by an alien present without being admitted who was detained under § 1225(b)(2)(A), holding that "under the plain language" of that statute, he was subject to mandatory detention pending decision on his removal. 2025 WL 3484855, at *4. *Chen* further held that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5-*7; *accord Chen*, 2026 WL 100761 at *8 (§ 1225(a)(1) defines "an alien present in the United States who has not been admitted" as an "applicant for admission," and mandatory detention under § 1225(b)(2)(A)

"reaches situations concerning" such aliens); *Candido v. Bondi*, 2025 WL 3484932 at *2 (W.D.N.Y. Dec. 4, 2025) (§ 1225(b)(2)(A) applied to alien present unlawfully for two decades).[7]

The conclusion that Petitioner is detained under § 1225(b)(2) is bolstered by recent persuasive precedent from the BIA, which is the highest administrative body for interpreting and applying the INA. In *Hurtado*, the BIA held that the INA requires that all applicants for admission, including those who entered the United States without admission or inspection and resided here for years without lawful status, be detained under § 1225 for the duration of their removal proceedings and "[r]emaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission." *Id.* at 228. (citing INA § 101(a)(13)(A) [8 U.S.C. § 1101(a)(13)(A)] (defining "admission")). Because that alien was subject

[7] *Accord Weng v. Genalo*, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Liang v. Almodovar*, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *see also Noel v. Walker*, 2026 WL 672903 (S. Fla. Mar. 10, 2026); *Sebastian v. Olson*, 2026 WL 672955 (E.D. Ky. Mar. 10, 2026); *Rayo v. Olson*, 2026 WL 594079 (E.D. Wisc. Mar. 3, 2026); *Jimenez v. Hardin*, 2026 WL 522991 (M.D. Fla. Feb. 25, 2026); *Mendoza v. Raycraft*, 2026 WL 507389 (N.D. Ohio Feb. 24, 2026); *Fleurimond v. Noem*, 2026 WL 507542 (D. Ariz. Feb. 24, 2026); *Saucedo Carera v. Bondi*, 2026 WL 508084 (D.N.D. Feb. 24, 2026); *Paz Salazar v. Noem*, 2026 WL 496956 (E.D. Cal. Feb. 23, 2026)); *Enriquez Pineda v. Noem*, 2026 WL 496680 (E.D. Mo. Feb. 23, 2026); *Gallardo Cardenas v. Noem*, 2026 WL 496797 (M.D. Fla. Feb. 23, 2026); *Guadarrama de Andrade v. Noem*, 2026 WL 483279 (D. Minn. Feb. 20, 2026); *Argenis M. v. Bondi*, 2026 WL 478189 (D. Minn. Feb. 19, 2026); *Mokanu v. Warden Miami Fed. Det. Ctr.*, 2026 WL 472294 (S.D. Fla. Feb. 19, 2026); *Alvarez-Felix v. Ramos*, 2026 WL 438160 (D.P.R. Feb. 17, 2026); *Gonzalez v. Ladwig*, 2026 WL 413602 (W.D. Tenn. Feb. 13, 2026); *Cisneros v. Noem*, -- F.Supp.3d --, 2026 WL 396300 (D. Utah Feb. 12, 2026); *Perez Chavez v. Noem*, -- F.Supp.3d --, 2026 WL 381618 (D. Ariz. Feb. 9, 2026); *Morales v. Noem*, -- F.Supp.3d --, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026); *Gutierrez Sosa v.* Holt, 2026 WL 36344 (W.D. Okl. Jan. 6, 2026); *Parra v. Secretary, Department of Homeland* Security, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026); *Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Zuniga v. Lyons*, -- F. Supp. --, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); *Montoya v. Holt*, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *A.M. v. Joyce*, 2025 WL 3706922 (D. Me. Dec. 22, 2025); *Calderon Lopez v. Lyons*, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025); *Rivera Hernandez v. Noem*, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025); *E.R.J.B. v. Wofford*, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Cruz Rodriguez v. Olson*, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025); *Padilla v. Galovich*, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025); *Coronado v. Sec'y, DHS*, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *P. B. v. Bergami*, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Garcia v. U.S. Attn'y Gen.*, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025); *Rodriguez v. Noem*, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Topal v. Bondi*, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Cruz v. Noem*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Garibay-Robledo v. Noem*, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

to mandatory detention, he was "ineligible for a bond hearing." *Id.* at 225. *Hurtado* is consistent with the plain language of the relevant statutes, Supreme Court precedent, and precedent in this Circuit and elsewhere, as discussed above. *See Fernandez Arevalo v. Bondi*, 130 F.4th 325, 335-36 (2d Cir. 2025) (construing INA that happened to be in the same manner as BIA had done, notwithstanding *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024)).

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 (b)(2)(A).

B. Petitioner's Arguments Why He Is Covered By Section 1226 Fail, And Decisions Reaching That Conclusion Ignore Congress's Mandate

Petitioner argues he is subject only to the detention authority in 8 U.S.C. § 1226(a), citing DHS's "longstanding practice" of applying § 1226(a) to aliens arrested within the interior and charged on their NTAs as not having been admitted or paroled. This is a red herring. A federal agency may change its position if it offers a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Chen*, 2025 WL 3484855, at *7 & n.1 ("failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law"). Indeed, "authority granted by Congress . . . cannot evaporate through lack of administrative exercise." *See Bankamerica Corp. v. U.S.*, 462 U.S. 122, 131 (1983).

In July 2025, DHS began globally applying the reading of § 1225(b)(2)(A) discussed *supra* at Part I.A, on detention of applicants for admission, and issued interim guidance that brought the Executive's detention practices in line with the text of § 1225(b)(2)(A). *See e.g.,* Memorandum from Rodney S. Scott, U.S. Customs & Border Protection, Detention of Applicants for Admission (July 10, 2025).[8] Specifically, DHS concluded that all aliens who enter the country without being

[8] https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf.

admitted are "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from [ICE] custody except by [8 U.S.C. § 1182(d)(5)] parole." *Id.* As a result, the "only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. § 1226(a)] are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227]." *Id.* This change was consistent with DHS's "broad discretion to make enforcement decisions in 'the immigration context'. *See Chen*, 2025 WL 3484855 at *7. [9]

Setting aside past practices, Petitioner's attempt to disregard the text of § 1225(b)(2)(A), to render § 1226(a) applicable, with its desirable absence of mandatory detention, is without merit.

Petitioner's reading of the INA that he is covered by § 1226(a) would return immigration law to its pre-IIRIRA construct and ignore the purpose of IIRIRA: to ensure that aliens who enter the country illegally are not treated more favorably than those who seek admission through the proper channels. *See Chavez*, --- F. Supp. 3d ---, 2025 WL 2730228, at *4. Before 1996, the INA incentivized aliens to enter the United States surreptitiously because they had more process and protections (namely, a bond hearing) than aliens "seeking admission" at a port of entry (requiring mandatory detention). *See* 8 U.S.C. § 1225(a)-(b) (1995). Under the pre-IIRIRA regime, Petitioner would have fallen into the category of aliens who could seek bond because he is present here. But through § 1225(a)(1), Congress corrected this "anomaly" to "ensure[] that all immigrants who

[9] DHS cannot be estopped from implementing its interpretation. *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation and "'[a]n administrative agency is not disqualified from changing its mind'"). The doctrine of equitable estoppel is applied against the Government only "'in the most serious of circumstances' . . . and is applied 'with the utmost caution and restraint.'" *Rojas-Hayes v. INS*, 235 F.3d 115, 126 (2d Cir. 2000) (quotations omitted). "In order to apply such estoppel against the Government, there must be "a showing of 'affirmative misconduct' by the [G]overnment." *Id.* (quotation omitted). A party must establish "*both* that the Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.'"). *See Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (citing *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994)); *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010) (negligence insufficient). Here, past practices and, indeed, use of forms relevant to different statutory provisions cannot estop the government from acting in accordance with § 1225(b)(2)(A), the statute Congress enacted. *See Rodriguez Figeroa v. Barr*, 442 F. Supp.3d 549 (W.D.N.Y. 2020). Likewise, if Petitioner has been afforded a grace of freedom of moment because of his superior skills at remaining under the radar, that is not a basis to estop application of § 1225(b)(2)(A).

have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *Hing Sum*, 602 F.3d at 1100. Hence, the pivotal factor in determining Petitioner's status after IIRIRA is "whether or not [he] has been lawfully admitted," not whether he physically entered the United States. *Hurtado*, 29 I. & N. Dec. at 223-24

To the extent that Petitioner argues that § 1226(a) is the default, that is wrong. Section 1226(a) applies only to some persons during their removal proceedings: in general, individuals who, unlike applicants for admission subject to § 1225, have already been admitted to the United States, such as those admitted through a work, tourist, student, or other type of visa, but who have overstayed or otherwise violated the terms of that visa, or who have been found later not to have been lawfully admitted. *See* 8 U.S.C. § 1226(c)(1)(A)-(D). *Buenrostro*, 166 F.4th at 500 (1226(a) "covers numerous grounds ... including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable or were improperly admitted"). For them, detention during their removal proceedings is generally discretionary, 8 U.S.C. § 1226(a)(1)-(2),[10] and they may also seek custody redetermination (a bond hearing) before an IJ and can appeal an IJ's custody determination to the BIA. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

To the extent that Petitioner argues that Respondents' reading of § 1225(b)(2)(A) would render superfluous the LRA, which added inter alia § 1226(c)(1)(E)(i) and (ii), and requires mandatory detention for some categories of those not yet admitted, Petitioner errs. While aliens under § 1225(b)(2)(A) are subject to discretionary parole under 8 U.S.C. § 1182(d)(5)(A), the LRA ensured that aliens of the sort who killed Laken Riley would not be so easily released; the only release under 8 U.S.C. § 1226 is for the restrictive bases identified in § 1226(c)(4). There

[10] Conditional parole under § 1226(a) is distinct from humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

may be some overlap between § 1225(b)(2)(A) and § 1226(c), in that the detention authority in either could cover certain "aliens who are deemed inadmissible." *See Weng,* 2026 WL 194248, at *5.. But "redundancies are common in statutory drafting and may be created in a congressional effort to be doubly sure." *Id.* at *6. And here, detention under § 1225(b)(2)(A) and § 1226(c) differ in at least one important respect: the standards by which the covered alien may be released -- as noted above – which by including a small subset of not admitted aliens within the LRA, "removed … detention discretion for aliens charged with specific – but not all – crimes." *Chavez*, 2025 WL 2730228, at *5; *accord Valencia*, 2025 WL 3205133, at *4; *Rojas*, 2025 WL 3033967, at *9.

Many courts have held that § 1225(b)(2)(A) covers only aliens "seeking admission," and that aliens must be taking an affirmative step towards admission to be covered by § 1225(b)(2)(A).[11] Respectfully, these arguments are incorrect. They miss how Congress defined and used "applicant for admission" and "seeking admission" throughout § 1225. Section 1225(b)(2)(A) requires the detention of "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Under the "ordinary meaning" of those terms, "[t]here is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something," so that

[11] *See, e.g.*, *J.U. v. Maldonado*, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Montoya v. Bondi*, 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Crespo Tacuri v. Genalo*, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026); *Ye v. Maldonado*, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.); *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, --- F. Supp. 3d. ---, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzalez, J.); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.); *see also Guerrero v. Noem*, 2025 WL 3214787, at *3-6 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.). *Diallo v. Maldonado*, 2025 WL 3158295 (E.D.N.Y. Nov. 12, 2025) (Gujarati, J.), is inapposite. That case rejected the Government's argument that detention was mandatory under § 1225, not owing to statutory interpretation, but on the grounds that for those paroled under 8 U.S.C. § 1182(d)(5), notice is required for early termination and, there, petitioner had received no notice. Respondents respectfully note that Diallo had never in fact been granted parole under § 1182(d)(5) and instead had been released on his own recognizance, but that in any event, the case is inapposite factually.

"[w]hen a person applies for something, they are necessarily seeking it." *See Buenrostro-Mendez*, 166 F.4that 503. Applicants for admission need not take any added step to be "seeking admission"; they already are. Thus, "alien seeking admission" does not restrict the coverage of § 1225(b)(2)(A) narrower than "applicant for admission."

Other provisions in § 1225 confirm Petitioner is wrong that "aliens seeking admission" is a subset of "applicants for admission," to wit, that it is an additional element. The opposite is true. An applicant for admission is within the set of "seeking admission" -- Congress within the same statute provided in § 1225(a)(3) that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). Petitioner's argument reads the "otherwise" modifier out of § 1225(a)(3), which does the work of confirming that "applicant for admission" is 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). *See Texas Dep't*, 576 U.S. at 535; *Att'y Gen. of United States*, 104 F.4th at 354; *Villarreal*, 839 F.3d at 963-64; *Kleber*, 914 F.3d at 482-83. "Applicants for admission" is a subset of aliens who are "seeking admission," and no added affirmative step towards admission, is necessary to qualify as "seeking admission."[12]

At bottom, Congress deemed all aliens present in the United States who have not been admitted as "applicants for admission." Holding, as Petitioner requests, that mandatory detention does not apply to aliens unless they are "seeking admission" "flies in the face of defined statutory text." *See Chen,* 2025 WL 3484855, at *4-5. "[N]othing in the text of Section 1225 or the logic of

[12] Further, the Fifth Circuit confirmed such statutory context supports Respondents, holding that "when an English speaker uses a phrase such as 'to bike, jog, or otherwise exercise,' the first two items constitute one item out of the overall set," so "an 'applicant for admission' is necessarily someone who is 'seeking admission.'" *Buenrostro*, 2026 WL 323330, at *5. Judge Cronan reached the same conclusion, holding that "Section 1225 itself expressly treats applicants for admission as among those seeking admission." *Chen*, 2026 WL 100761 at *9.

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

Agreeing with Petitioner that § 1225(b)(2)(A) applies only to aliens "seeking [admission] to the United States or [who] have a close nexus to the border" (Pet. ¶ 31) "introduce[s] more questions to the statute than answers." *See Chen*, 2026 WL 100761 at 9. Among them: "at what point does an alien who enters unlawfully no longer actively desire admission? Indeed, when is someone already here?" *Id.* As another judge elaborated:

> Is two years of unadmitted residence long enough? Three? How far must an alien travel from the border? 50 miles? 100? If an alien has been in the interior a short time but resides far away from the border, can the distance make up for a short duration? Or, if an alien lives close to the border but resides in the country for decades, can the time period make up for the short distance?

See Montoya, 2025 WL 3733302, at *2. The answers to these questions "sound in the province of an elected Congress rather than an unelected judge." *Id.* Here, Congress limited the timeframe for expedited removal in 8 U.S.C. § 1225(b)(1), but not for mandatory detention in removal proceedings in 8 U.S.C. § 1225(b)(2)(A). Indeed, as Judge Cronan concluded, "[t]he answer to these messy questions [] 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.'" *Chen*, 2026 WL 100761 at *9. Neither the duration of Petitioner'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." Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States"

confirms that *all* aliens who are not admitted are "applicants for admission," regardless of how long they have been present and whether they are taking steps towards admission.

Here, Petitioner falls within the statutory definition of "applicant for admission" as he was "present" in this country and had "not been admitted" and had not "clearly and beyond a doubt" established that he was "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Thus, he "shall be detained" during the pendency of his removal proceedings. *Id.* Any other reading would be inconsistent with the statutory text and the change IRRIRA effectuated, of eliminating the dichotomy that had afforded bond hearings to those who had sneaked across the border. *Buenrostro*, 166 F.4th at 499, 508 ("Its seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants").

II. PETITIONER'S DETENTION COMPORTS WITH DUE PROCESS

Petitioner claims that his detention violates his procedural and substantive due process rights because he is subject to mandatory detention, and not a discretionary determination of flight risk and subsequent opportunity for a bond hearing. Pet. Counts I and II.

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

Because Petitioner is an applicant for admission and thus treated for constitutional purposes as if stopped at the border,[13] he is lawfully detained pursuant to § 1225(b)(2)(A), as the Supreme Court has made clear that "[w]hatever the procedure authorized by Congress is, it is due process

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

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 treated differently for due process purposes from other categories of detained aliens. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In the INA, Congress treated applicants for admission differently by mandating detention during ongoing proceedings to effectuate their removal. Unlike admitted aliens later placed in removal proceedings and detained under § 1226, applicants for admission are "request[ing] a privilege," *Landon v. Plasencia*, 459 U.S. 21, 32 (1982), and therefore "stand[] on a different footing," *Mezei*, 345 U.S. at 212. The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, 591 U.S. at 139-40. The Court explained, "[w]hen an alien arrives at a port of entry — for example, an international airport — the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. Moreover, such aliens "even those paroled elsewhere in the country for years pending removal — are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Supreme Court was clear: "the Due Process Clause provides nothing more" than the process in 8 U.S.C. § 1225 that allows an individual to seek protection from removal if he fears return to his home country and to seek from DHS section 1182(d)(5)(A) parole. *Id.*

Courts have applied this entry fiction to provide only the process set forth in the INA to aliens who have "entered" and who have developed significant ties to this country during this time.

See e.g., *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).

Here, "because the immigration statutes at issue [ ] do not authorize a bond hearing, *Mezei* dictates that due process does not require one." *Poonjani*, 319 F. Supp. 3d at 649. Given that the due process rights of applicants for admission are limited to the process that Congress chooses to provide, and 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. Petitioner cannot show that he is owed

process – assessments by ICE or a bond hearing -- beyond mandatory detention.

Petitioner's detention for the pendency of his removal proceedings also does not run afoul of his substantive due process rights. 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).

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").[14] 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"). Here, Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is both rational, and mandated, subject only to discretionary parole under 8 U.S.C. § 1182(d)(5)(A), *see Jennings*, 583 U.S. at 298-301. He is owed no more process.

[14] 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.").

III. THE APA CLAIM IS IMPROPER

Last, Petitioner claims his detention is "arbitrary and capricious" and warrants review under 5 U.S.C. § 706(2)(A). Pet. ¶¶ 45-46. However, the APA is not a viable vehicle for claims arising out of his detention. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), in which claims including due process claims were brought under the APA, the INA, various habeas provisions, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement," regardless of whether Petitioner requests release from confinement, those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." *See Id.* at 1005. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim—though they fail for the reasons discussed *supra*—and are not cognizable under the APA. Additionally, by the APA's terms, it is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claims are independently barred by this limitation. As noted by Justice Kavanaugh's concurrence in *J.G.G.*, "[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention.[15]

CONCLUSION

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

Dated: Brooklyn, New York
March 15, 2026

[15]To the extent that the Court finds that the APA claim lies, and also does not grant the Petition, Respondents should be afforded 60 days to respond as Fed. R. Civ. P. 12(a)(2) requires./

Respectfully submitted,

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

BY: /s/ Layaliza Soloveichik
LAYALIZA SOLOVEICHIK
ALEXANDRA MEGARIS
Assistant United States Attorneys
(718) 254-6298/6105
layaliza.soloveichik@usdoj.gov
alexandra.megaris@usdoj.gov