U.S. Department of Justice

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Eastern District of New York

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BY ECF

March 17, 2026

Honorable Diane Gujarati
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Aparicio v. Maldonado*, Civil Action No. 26-1379 (DG)

Dear Judge Gujarati:

This Office represents Respondents in the above-referenced Petition For Writ of Habeas Corpus ("Petition"). By Order dated March 12, 2026, Your Honor, *inter alia*, ordered Respondents to show cause in writing why a writ of *habeas corpus* should not be issued and further directed Respondents to file (under seal if necessary) "any documents from Petitioner's immigration file relevant to the issues raised in the Petition" by 5:00 p.m. on March 17, 2026 ("Court Order"). Respondents respectfully submit this letter in response to the Court Order.

I. Relevant Facts

On May 5, 2004, Petitioner was encountered by United States Customs and Border Protection ("CBP") at or near the Nogales, Arizona border. *See* Declaration of Jason Mascia ("ICE Decl.") ¶ 5. CBP determined that Petitioner was a citizen of Mexico and that he had illegally entered the United States without inspection and did not possess the necessary legal documentation to enter, pass through, or remain in the United States. *Id.* CBP offered Petitioner a Voluntary Return to Mexico, which Petitioner accepted and then departed the United States. *Id.*

Petitioner re-entered the United States on an unknown date and at an unknown location. Petitioner was not admitted or paroled by an immigration officer after inspection. *Id.* ¶ 6.[1] Since his unlawfully and surreptitiously re-entered the United States, he has evaded detection by ICE.

On February 26, 2026, at approximately 10:15pm, ICE Enforcement Removal Operations ("ERO") Long Island received a call from the Nassau County Police Department ("NCPD") regarding a person in its custody believed to be illegally present in the United States. *Id.* ¶ 7. According to the NCPD Arrest Report, which ICE received from the NCPD, NCPD police officers responded to complaints of vagrancy and public intoxication and observed Petitioner in possession of an open 24 oz. "Steel Reserve" tall boy and standing on top and near fecal matter and other garbage. *See* Exhibit C to ICE Decl. (Arrest Report). Petitioner was arrested and charged with

[1] According to the Petition, Petitioner entered without inspection across the Mexico-United States border "on or about 2007." Pet., ¶ 21.

violating Town of North Hempstead Ordinance 44.3.B.[2] *Id.*

A records checks conducted by ICE revealed that Octavio Aparicio Santiago was illegally present in the United States. *See* ICE Decl. ¶ 7. An I-200 Warrant for arrest was issued and signed by a Supervisory Detention and Deportation Officer (SDDO), and ICE officers responded to the Nassau County Third Precinct. *Id.*

At the precinct, Deportation Officer Jason Mascia ("DO Mascia") positively identified the Petitioner, Octavio Aparicio Santiago. *Id.* ¶ 8. DO Mascia identified himself as an Immigration Officer who is authorized to execute an arrest. *Id.* DO Mascia then conducted a field interview of the Petitioner, at which time the Petitioner stated that he is not a national or citizen of the United States and that he is illegally present in the United States. *Id.* DO Mascia advised the Petitioner that he is under arrest and the reason for the arrest, and then arrested the Petitioner, pursuant to the aforementioned Warrant for Arrest. *Id.*

Petitioner was transferred to the ICE intake facility in East Meadow, New York for processing. *Id.* ¶ 9. At the ICE intake facility, ICE served Petitioner, with the assistance of a telephonic Spanish interpreter, a Notice to Appear ("NTA"), charging him as inadmissible under Immigration and Nationality Act ("INA") section 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 States at any time or place other than as designated by the Attorney General. *Id.* ¶ 10. The Petitioner was also served with a copy of the Warrant of Arrest and provided the list of free legal service providers. *Id.*

On the morning of February 27, 2026, Petitioner was transferred and booked into the Hold Room at 26 Federal Plaza, New York, New York. *Id.* ¶ 11. That evening, Petitioner was transferred and booked into Delaney Hall Detention Facility in Newark, New Jersey. *Id.* ¶ 13. On March 4, 2026, Petitioner was transferred to and booked into the Metropolitan Detention Center in Brooklyn, New York, where he is currently detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 16. Petitioner's removal proceedings are pending in the New York Immigration Court. On March 10, 2026, Petitioner appeared for a hearing, via video teleconferencing, with his attorney. *Id.* ¶ 19. Petitioner's attorney requested additional time to prepare for the proceeding; Petitioner's next master calendar hearing is on March 24, 2026. *Id.* ¶¶ 19-20.

II. Petitioner's Habeas Petition

Petitioner claims that his arrest by the NCPD—which is not named as a Respondent to the Petition—on February 26, 2026 violated the Fourth Amendment because it was done without reasonable suspicion that Petitioner was breaking any New York criminal law. *See* Pet., Count One, at 7. Petitioner further claims that his continued detention by ICE violates his procedural due process rights and substantive due process rights. *See* Pet., Counts Two and Three, at 7-8. Petitioner appears to ground his due process claims on the argument that the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to him because, at the time of his arrest and detention, he had already been present in the United States for two years. *See* Pet. ¶ 11.

[2] *See* https://ecode360.com/9297694 (last visited March 16, 2026).

In his prayer for relief, Petitioner, in relevant part, asks that the Court issue a writ of *habeas corpus* ordering his release or, in the alternative, to hold a bail hearing. *See* Pet., Prayer for Relief, at 9.

III. The Court's Decision in *Diallo*

On November 12, 2025, this Court issued a decision in *Diallo v. Maldonado*, a habeas case challenging whether an alien who was never lawfully admitted, but who had previously been released from custody and was present in the country, is subject to mandatory detention under § 1225, or instead subject to detention under § 1226(a), which permits bond. *Diallo v. Maldonado*, No. 25-05740, 2025 WL 3158295, at *1 (E.D.N.Y. Nov. 12, 2025).

The Court concluded that it need not resolve the statutory interpretation question of whether § 1225 or § 1226(a) applied because, even assuming that § 1225 applied, the petitioner's detention violated the Due Process clause. *Id.* at *3. In particular, the Court noted that Diallo had previously been released from custody after he was initially apprehended in December 2023 and, based on the fact of that release, concluded that release would have to have been parole under 8 U.S.C. § 1182(d)(5)(A) because that is the sole statutory authority under which an alien subject to Section 1225 may be released. *Id.* at *4-5 (citing *Savane v. Francis*, No. 25- 06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.)).[3] The Court further concluded that termination of parole requires written notice to the alien and an individualized assessment as to whether parole should be terminated. *Id.* citing 8 C.F.R. 212.5(e)(2)(i) and *Savane*, 2025 WL 2774452, at *8. Because those procedures were not provided, the Court concluded that Diallo's detention violated his Fifth Amendment's procedural due process rights and granted the petition. *Id.* at *5.

IV. Discussion

Petitioner's detention under § 1225 is lawful, and Petitioner's arguments to the contrary, including based on his physical presence in the interior of the United States, are unavailing, as set forth below. Since *Diallo*, the Fifth Circuit, the Honorable Brian M. Cogan, and multiple Southern District of New York courts have recognized that 1225(b)(2)(A) requires detention without access to a bond hearing for all applicants for admission, including those encountered in the interior of the country. *See, e.g., Buenrostro-Mendez v. Bondi*, 166 F. 4th 494 (5th Cir. 2026); *Samaashvili v. Flanagan*, No. 25-6178, 2026 WL 377574, at *2-3 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.); *Changgeng Chen v. Almodovar, et al.*, No. 25-9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 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.); *Weng v. Genalo*, No. 25-09595, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Chen*

[3] The government respectfully notes that since that time, the Honorable Gregory H. Woods, on whose decision in *Savane* the *Diallo* decision relies, has reached the same conclusion as Respondents advanced in *Diallo*, and found that 1225(b)(2)(A) does apply to cases such as this one, where the alien has never been admitted, regardless of whether he has been physically since been present in the United States. *Arana v. Arteta*, No. 26-240-GHW, 2026 WL 279786, at *1 (S.D.N.Y. Feb. 3, 2026).

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.), *appeal filed*; *Chen v. Almodovar*, No. 25-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *appeal filed*.[4]

Petitioner's detention does not violate the Due Process Clause of the Fifth Amendment because, as an alien subject to mandatory detention under § 1225, he has been provided with the process that he is due. *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Finally, ICE arrested Petitioner pursuant to properly issued administrative warrant and therefore Petitioner's claim that Respondents violated his Fourth Amendment rights fails.

A. The Text of Section 1225 Contains No Border or Geographic Limitation and Covers Applicants for Admission "Present in the United States"

In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress made numerous changes to the text of the INA. Specifically, as codified at 8 U.S.C. § 1225(a), Congress eliminated a prior distinction between presence and entry, and instead promulgated that "an alien *present* in the United States *who has not been admitted* . . . shall be deemed for purposes of this chapter *an applicant for admission*" (emphasis added). Further, Congress defined "admission" 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, whereas previously the INA had separated aliens who had "enter[ed]" from aliens who were being inspected at a port of entry, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," all "aliens who have not yet entered" with "aliens who are already present in the United States but did not enter lawfully." *See Xiaoquan Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) ("*Xiaoquan Chen*"), *appeal filed*, 25-3169.

Also codified at § 1225(a)(3), Congress defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission . . . shall be inspected by immigration officers"). (emphasis added).

The statute here makes no exception for the duration of the alien's presence in the country or how far the alien's incursion into the country. Congress knows how to limit the scope of a statute when it wants to. For instance, § 1225(b)(1)(A)(iii) is limited to an alien who cannot show that he has been physically present in the United States "continuously for the 2-year period immediately

[4] Respondents acknowledge that a larger number of non-binding court decisions across the country have rejected Respondents' statutory construction. However, as recently explained by the Hon. John L. Sinatra, Jr., W.D.N.Y., "[t]he fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." *Candido v. Bondi, et al.*, 25-cv-867, 2025 WL 3484932 at *2 (Dec. 4, 2025). Respondents respectfully note that the government has affirmatively appealed the grant of a habeas petition in *Cunha v. Moniz*, 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that § 1226(a), not § 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141. Briefing was completed on March 3, 2026 and oral argument has been scheduled for April 6, 2026.

prior." There is no such limitation on § 1225(b)(2)(A) detentions. "If Congress meant to say 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 v. Noem, NO. 25-cv-168, 2025 WL 3131942, at *4 (E.D. Mo. No. 10, 2025). Section 1225, instead, requires mandatory detention of applicants for admission who are not clearly and beyond a doubt entitled to admission, regardless of how long an alien has been unlawfully present in the United States or the alien's distance from the border. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225 places under its ambit those present and not admitted, and such text is where this Court's "analysis" should "begin[] and end[]." *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020).

Here, Petitioner falls squarely within the statutory definition. When he was arrested by ICE on February 27, 2026, he "present in the United States" -- unlawfully and without detection since, allegedly, 2007 -- and had "not been admitted." Further, Petitioner has not established—and cannot establish—that he is "clearly and beyond a doubt entitled to be admitted." In fact, ICE has placed him in removal proceedings because he is not entitled to be admitted. Petitioner "shall," therefore, "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

Multiple courts, including the first (and thus far only) U.S. appellate court to rule on the merits of the statutory interpretation question and several district courts in this Circuit, have endorsed this plain application of the statutory text. The Fifth Circuit confirmed Respondents' reading that § 1225(b)(2)(A) covers applicants for admission, like Petitioner, regardless of where or how they entered the country. *See Buenrostro-Mendez*, 166 F.4th at 499. As it held, an alien is an applicant for admission "whether or not [they arrived] at a designated port of arrival" and regardless of "where or how the alien entered the United States." *Id.* at *2. For such aliens not otherwise covered by § 1225(b)(1), § 1225(b)(2)(A) requires detention. *Id.*

Several courts, including in this District and Circuit, agree. For example, in *Saamishvili*,[5] the Honorable Brian M. Cogan rejected a habeas petition from an alien present here 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 v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011)). 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, as he "continues to be[] subject to the mandatory detention requirement of Section 1225(b)(2)(A)" "[s]ince his unlawful entry." *See id.* at *2-*3.

[5] The Petitioners in *Saamishvili*, *Xiaoquan Chen* and *Candido* have appealed to the Second Circuit. *See Saamishvili v. Flanagan*, No. 26-00354 (2d Cir.); *Xiaoquan Chen v. Almodovar*, No. 25-3169 (2d Cir.); *Candido v. Bondi*, No. 25-3159 (2d Cir.).

Likewise, in *Yinxiao Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761, * 1 (S.D.N.Y. Jan. 14, 2026) ("*Yinxiao Chen*"), 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.*

Judge Cronan also showed that other district courts erred in holding that the § 1225(b)(2)(A) detention authority covers only the purported subset of applicants for admission who are "seeking admission" through affirmative steps towards lawful admission. *See Yinxiao Chen*, 2026 WL 100761, at *8-*10. As Judge Cronan held, aliens "seeking admission" are not a subset of "applicants for admission" but rather the opposite is true: "Section 1225 itself expressly treats applicants for admission as among those seeking admission." *See id.* at *9 (citing § 1225(a)(3), (5)). Judge Cronan concluded that such other district court holdings "introduce[] more questions to the statute than answers." *Yinxiao Chen*, 2026 WL 100761, at *9. "The answer," Judge Cronan determined, "is the one that Congress has already provided throughout Section 1225: an applicant for admission is 'seeking admission,' even when that noncitizen is 'present in the United States' without having 'been admitted.'" *Id.*

In *Espinova Lopez v. Noem*, No. 26-cv-345, 2026 WL 266597, *1 (Feb. 2, 2026)—a case with facts similar to this action—the petitioner crossed the border and was never apprehended by, or interacted with, ICE until January 2026, when ICE encountered him in Queens. *Id.* He provided his name, date and country of birth to the ICE officers and admitted that he was illegally present in the United States. *Id.* He was arrested, put into removal proceedings, and detained. *Id.* The Honorable Jennifer H. Rearden dismissed the habeas petition, holding that the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Id.* *2. Judge Rearden reasoned that petitioner had not been admitted because he did not lawfully enter the country after inspection and authorization by an immigration officer and thus was an applicant for admission, and, during his encounter with ICE in January 2026, the examining officer determined he was not clearly and beyond a doubt entitled to be admitted. *Id.* Accordingly, Judge Rearden concluded, he is subject to detention under § 1225(b)(2)(A). *Id. See also Alvarado Quezada v. Francis*, No. 26-cv-387, 2026 WL 380711 (Feb. 11, 2026) (Cronan, J.) (petitioner, who allegedly entered the country in 2011, first encountered by ICE in a traffic stop in October 2025, was detained pursuant to § 1225(b)(2)(A) despite presence in the country over a decade).

At bottom, the decisions holding § 1226(a) applicable to an alien present inside the United States prior to their detention have not addressed a critical issue: "How does a court determine when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya v. Holt, et al.*, No. 25-cv-1231, 2025 WL 3733302, at *2 (W.D. Okla. Dec. 26, 2025). *Montoya* 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?

Id. If an alien is not admitted to the United States, but is not seeking admission, as petitioner wants to describe events, then what is his category? He has none except under section 1225 as an applicant for admission. Neither the duration of an alien's unlawful presence in the United States nor his distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." *Chen,* 2025 WL 3484855, at *5 (finding that the concerns and arguments about surplusage are misplaced).

It is Congress that has delineated when an alien "seeking admission" is, and is not, an "applicant for admission." 8 USC 1225a1, a(3). Petitioner has not been admitted, ergo he is an applicant for admission. Because he is in removal proceedings 8 U.S.C. § 1225(b)(2)(a) requires his detention.

B. Imposing a Border Limitation Onto § 1225 Subverts the INA Amendments

An interpretation that applies § 1225 only at or near the border, and which concludes that it cannot apply to those who are present in the country unlawfully without those temporal and geographic limitations, subverts what Congress did when it passed IIRIRA of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the [applicable a]ct to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

Before 1996, aliens who attempted to enter the United States by presenting for inspection at a port of entry received less process and were subject to more restrictions than aliens who entered surreptitiously by crossing the border unlawfully. Specifically, under the pre-1996 scheme, 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. *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). In contrast, an alien who evaded inspection and physically entered the United States was placed in "deportation" proceedings and taken into custody under an arrest warrant but could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hing Sum*, 602 F.3d at 1100. 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.

IIRIRA removed the exclusion-deportation distinction to ensure that aliens who enter unlawfully and evade apprehension for a long period of time are not in a more favorable position than an alien who enters unlawfully but is apprehended immediately. *Saamishvili*, 2026 WL 377574, at *2.

Petitioner's circumstances—surreptitious entrance into the United States without presenting himself to immigration authorities and who evaded immigration authorities for years or

even decades—are exactly those Congress sought to address when it passed IIRIRA. Under the prior regime, the INA would have granted a bond hearing to Petitioner (but required detention of an alien who, unlike Petitioner, presented himself at the border). By passing IIRIRA, Congress sought to eradicate this "perverse incentive to enter" unlawfully. *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). Treating Petitioner as subject to § 1226(a) "flies in the face of Congress' decision codified in the IIRIRA, to change the immigration system that had turned on whether "an alien [was] already here," and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry." *Xiaquan Chen*, 2025 WL 3484855, at *5.

C. Supreme Court Precedent Supports, Not Undermines, Respondents' Interpretation of § 1225

Recent Supreme Court precedent does not undermine, and indeed supports, Respondents' position. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 (2018) and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).

Respondents respectfully submit that the entry-fiction doctrine set forth in *Thuraissigiam* – and the process due aliens at the border—supports their position. The doctrine is consistent with Respondents' interpretation of the statute. There, 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. Petitioner's physical presence in the country is irrelevant, and he should be treated as if stopped at the border, and thus subject to § 1225 mandatory detention.

Even more significantly, *Jennings* defined "applicant for admission" in a manner consistent with Respondents' position: "an alien who 'arrives in the United States,' or '*is present' in this country but 'has not been admitted', is treated as 'an applicant for admission.*'" *Jennings*, 583 U.S. at 287 (emphasis added). And, consistent with Respondents' reading, the Supreme Court recognized in its description of § 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287; *see also Saamishvili*, 2026 WL 377574, *3. Nothing in *Jennings* displaces the statute's plain text and the manifest congressional purpose.

D. Petitioner's Arrest Comports With Due Process

Petitioner claims that his detention violates the Due Process Clause of the Fifth Amendment. *See* Pet., Counts Two and Three, at 7-8. This claim fails because for applicants for admission, receiving statutory process, as Petitioner has, suffices for due process.

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)). This claim fails because for applicants for admission, the process Congress provides suffices for due process too, and that is what Petitioner received.

Because Petitioner is an applicant for admission and thus treated for constitutional purposes

as if stopped at the border,[6] he is lawfully detained pursuant to § 1225(b), and his procedural due process rights have not been violated. 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 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 decided to treat applicants for admission differently by detaining them 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. Their lack of entitlement to a bond hearing thus flows from their lack of admission.

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. Stated further, "aliens who arrive at ports of entry — 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 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 parole from the agency. *Id.*

Courts have applied this entry fiction to aliens who have "entered" and who have developed significant ties to this country during this time. *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."); Gonzalez 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"); *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); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (parolee 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"); *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."); *D.A.V.V. v. Warden, Irwin County*

[6] 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).

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").

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, Petitioner cannot show that he has suffered a procedural due process violation.

Detention for the time-limited pendency of removal proceedings also does not run afoul of his substantive due process rights. A substantive due process claim must allege 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 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.

E. Petitioner's Arrest by ICE Comports with the Fourth Amendment

Petitioner argues his arrest by NCPD on February 26, 2026, violated his Fourth Amendment rights because the arrest was done without a warrant or reasonable suspicion that he was breaking any New York criminal law. *See* Pet., Count One, at 7. Even if the NCPD—which is not a party to this action—arrested Petitioner without reasonable suspicion,[7] the claim fails

[7] According to the NCPD Arrest Report, which ICE received from the NCPD, Petitioner was arrested by NCPD after NCPD received complaints of vagrancy and public intoxication and, upon responding to the complaints, observed Petitioner at or near 853 Prospect Avenue, New Cassel,

because Petitioner's detention, and the basis of the Petition, is his arrest and civil detention by ICE, not NCPD. The arrest of Petitioner by ICE was a reasonable and lawful exercise of federal immigration authority. As the Supreme Court recognized in *Abel v. United States*, 362 U.S. 217 (1960), administrative arrests for deportation have a long-standing statutory history and are distinct from arrests for criminal offenses. The Supreme Court held that that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such a long-sanctioned practice of government at the behest of a party who not only did not challenge the exercise of authority below, but expressly acknowledged its validity." *Abel*, 362 U.S. at 230. Here, Petitioner does not allege that the arrest by ICE officers was procedurally improper or defective in any way; it was a reasonable and lawful exercise of ICE's authority, as granted by Congress. *See, e.g.*, 8 U.S.C. § 1357(a); 8 C.F.R. § 287.5.

V. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny this habeas petition. Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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New York, in possession of an open 24 oz. "Steel Reserve" tall boy and standing on top and near fecal matter and other garbage. *See* Exhibit C to ICE Decl. (Arrest Report and Appearance Ticket). Petitioner was arrested and charged with violating Town of North Hempstead Ordinance 44.3.B and given a court hearing date of March 19, 2026. *Id.*