UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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J.U.,

Petitioner

-against-

RAUL MALDONADO, Jr., in his official Capacity as Warden of the Metropolitan Detention Center,

Respondent.
----------x

Civil Action No.
25-cv-4836

(Merchant, J.)

RESPONDENT'S OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

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September 12, 2025

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Respondent Raul Maldonado, Jr., in his official capacity as Warden of the Metropolitan Detention Center ("MDC"), located in Brooklyn, New York, by his attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Alexandra Megaris, Assistant United States Attorney, of counsel, respectfully submits this memorandum of law in opposition to the Petition for a Writ of Habeas Corpus ("Petition"). Dkt. No. 1 ("Pet.").

PRELIMINARY STATEMENT

In March 2024, Petitioner, a native and citizen of Venezuela, unlawfully entered the United States without presenting himself to an immigration officer for inspection at a designated port of entry. Soon thereafter, U.S. Customs and Border Protection ("CBP") encountered Petitioner near El Paso, Texas, and arrested him. At the time of Petitioner's apprehension, CBP had the discretion either to issue an expedited removal order under 8 U.S.C. § 1225(b)(1)(A) or to place Petitioner into full removal proceedings under 8 U.S.C. § 1229a. Under either option, Petitioner should have been detained (or immediately removed without a hearing). CBP opted to place Petitioner in full removal proceedings and, due to lack of bedspace, to conditionally release him on his own recognizance in the interim.

Because he is an alien who entered the United States without admission and without proper documentation, Petitioner was—and continues to be—an "applicant for admission" into the United States. Under applicable immigration statutes, "applicants for admission" generally are subject to mandatory detention under 8 U.S.C. § 1225(b) until they are removed from the country or the completion of their immigration proceedings, as applicable. CBP's earlier decision to conditionally release Petitioner pending the outcome of his removal proceedings does not impact his legal status as an "applicant for admission." To this day, Petitioner has not been admitted into the United States.

On July 1, 2025, Immigration and Customs Enforcement ("ICE") detained Petitioner at 26 Federal Plaza, New York, and on July 7, 2025, transferred him to MDC. Because Petitioner was placed in civil detention, his immigration case was administratively transferred to the detained docket at the Varick Street Immigration Court and an individual hearing on the merits of his case promptly was scheduled for September 30, 2025.[1] At this upcoming hearing, Petitioner, who is represented by counsel, will be afforded the opportunity to present his asylum claim to an Immigration Judge ("IJ").

Petitioner now seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention under the INA and seeking his immediate release from custody. The Petition must be denied.

The Court should deny the Petition because Petitioner has failed to exhaust administrative remedies. Petitioner has not requested discretionary parole under 8 U.S.C. § 1182(d)(5)(A), which, if granted, would provide him the relief he seeks. Petitioner also currently has an appeal of the IJ's decision to deny him a bond hearing pending with the Board of Immigration Appeals ("BIA").

The Court also should deny the Petition because Petitioner, as an "applicant for admission," is properly being detained pending the outcome of his removal proceedings. Petitioner argues that, contrary to the plain language of 8 U.S.C. § 1225(b)(2), the authority for his detention arises under 8 U.S.C. § 1226(a), a detention statute that allows for bond hearings. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to mandatory detention without bond found in 8 U.S.C. § 1225(b)(2). Further, Petitioner's statutorily-mandated detention does not run afoul of the Fifth Amendment's Due Process Clause because, as an "applicant for admission," Petitioner's only rights regarding admission that are those that

[1] Petitioner requested an adjournment of his September 30, 2025 hearing, to which ICE consented. On September 11, 2025, the Immigration Court granted Petitioner's motion and rescheduled Petitioner's hearing for October 9, 2025.

Congress has provided by statute. In the seminal case of *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) ("*Mezei*"), the Supreme Court held that "an alien on the threshold of initial entry stands on a different footing: Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." 345 U.S. at 212 (internal quotations omitted). Under § 1225(b), applicants for admission have no due process right to a pre-detention individualized determination. *Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018). In *Jennings*, the Supreme Court also noted that detention pursuant to § 1225(b) is not indefinite, but instead it is "for a specified period of time." *Id.* at 289. As an "applicant for admission" in removal proceedings, Petitioner has been afforded the process he is due. He has pursued an application for asylum, made multiple appearances before an IJ, submitted written pleadings to the Immigration Court, was granted two custody redetermination hearings, and is scheduled to present his asylum claim before an IJ in a few weeks.

Finally, Petitioner should not be released pending adjudication of the Petition because there are no extraordinary circumstances warranting release.

STATUTORY & REGULATORY BACKGROUND

In the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal and during the administrative and judicial review of removal orders. *See* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)). Aliens who have entered the United States without being admitted upon inspection or paroled—known as "applicants for admission"—are subject to mandatory detention.

I. "APPLICANTS FOR ADMISSION" AND DETENTION UNDER 8 U.S.C. § 1225

Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is an "applicant for admission." 8 U.S.C. § 1225(a)(1) (defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States). And, "admission" is defined not as mere entry, but the "*lawful* entry of an alien into the United States after inspection and authorization by an immigration officer". 8 U.S.C. § 1101(a)(13) (emphasis added). However long he or she has been in this country, an alien who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under the "entry fiction," although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into the United States. *See, e.g., Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018). All applicants for admission are either subject to § 1225(b)(1) or § 1225(b)(2), both of which require mandatory detention. *Jennings,* 583 U.S. at 287; 8 U.S.C. § 1225(b)(1), (2).

A. Section 1225(b)(1)

Congress established an expedited removal process in § 1225(b)(1) so that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010). Under this provision, "arriving aliens" and aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" may be removed from the United States without further hearing or review. 8 U.S.C. § 1225(b)(1)(A)(i), (iii). But, if the alien indicates an intention to apply for asylum or expresses a fear of persecution, immigration officers will refer him for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is detained during consideration

of the application for asylum. *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

B. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an applicant for admission "shall be detained" pending a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, … 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). The Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole any alien applying for admission to the United States on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

II. DETENTION UNDER 8 U.S.C. § 1226(A)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the United States but are deportable and subject to removal proceedings. Section 1226(a) provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional

parole.[2] By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

III. REVIEW AT THE BOARD OF IMMIGRATION APPEALS

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR") "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the IJs, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7). Relevant here, an IJ's decision following a custody determination hearing is appealable to the BIA.

FACTUAL AND PROCEDUAL BACKGROUND

Petitioner, a native and citizen of Venezuela, unlawfully entered the United States from Mexico on or around March 18, 2024 without being admitted, inspected, or paroled by an immigration officer. *See* Declaration of Deportation Officer Michael Charles dated September 12, 2025, ¶¶ 3,4 ("Decl."). CBP officers thereafter encountered Petitioner, apprehended him, and transported him to the El Paso Hardened Facility for processing on March 19, 2024. Decl. ¶ 4. During processing, ICE served Petitioner an NTA, charging him as removable based on his

[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes*, 501 F.3d at 1116.

presence in the United States without being admitted or paroled. Decl. ¶ 5. That same day, ICE filed the NTA with the New York Immigration Court thereby placing him in removal proceedings. Decl. ¶ 7. The NTA ordered Petitioner to appear on June 17, 2025 at Immigration Court at 26 Federal Plaza in New York for an initial master hearing. *Id.* Petitioner also was served with Form I-200, Warrant for Arrest of Alien. Decl. ¶ 6. Because of a lack of bed space, CBP released Petitioner on his own recognizance while the removal proceedings were pending. Decl. ¶ 6.

In the spring of 2024, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal, with the New York Immigration Court. Decl. ¶ 8.

On June 17, 2025, Petitioner appeared for his initial master hearing at New York Immigration Court and was granted a continuance until July 1, 2015. Decl. ¶ 9. On July 1, 2025, Petitioner appeared for the master hearing. Decl. ¶ 10. At the hearing, Petitioner was served with a Notice of Hearing informing him that his next master hearing would be on March 10, 2026. *Id.* Following the July 1, 2025 master hearing, ICE took Petitioner into custody and transported him to ICE's processing space at 26 Federal Plaza in New York. Decl. ¶ 11. Petitioner was transferred to MDC on July 7, 2025. Decl. ¶ 12. Petitioner's immigration case was administratively transferred to the detained docket at the Varick Street Immigration Court. Decl. ¶ 13. EOIR scheduled Petitioner's individual hearing on the merits of his asylum claim for September 30, 2025 (the hearing has been moved to October 9, 2025 at Petitioner's request). Decl. ¶¶ 24, 25.

On July 11, 2025, Petitioner, through counsel, filed written pleadings with the Immigration Court wherein he admitted the factual allegations in the NTA and conceded that he is removable under INA §212(a)(6)(a)(i), 8 U.S.C. §1182(a)(6)(A)(i). Decl. ¶ 14. Petitioner also filed a motion for a custody redetermination hearing with the Varick Street Immigration Court, which was conducted by an IJ on July 31, 2025. Decl. ¶ 17. The IJ denied bond, concluding he had no

jurisdiction to set bond because Petitioner is an is subject to mandatory detention under 8 U.S.C. § 1225. Decl. ¶ 18. On August 27, 2025, an IJ conducted a second custody redetermination hearing for Petitioner and again denied the request to set bond. Decl. ¶¶ 21, 22. Petitioner appealed that decision with the BIA on August 27, 2025, which is currently pending. Decl. ¶ 23.

Petitioner commenced this action on August 29, 2025, by filing the Petition. Dkt. No. 1. Petitioner argues that his detention is unlawful because (1) it violates the INA, and (2) it violates his Fifth Amendment right to due process. Pet. ¶¶ 111-118.

ARGUMENT

I. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

The Court should dismiss the Petition because Petitioner has failed to exhaust his administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.); *Carmona v. U.S. Bureau of Prisons,* 243 F.3d 629 (2d Cir. 2001). Indeed, judicial exhaustion "serves myriad purposes, including limiting judicial interference in agency affairs, conserving judicial resources, and preventing the frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency." *See Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998) (internal quotation marks omitted).

Here, Petitioner has two administrative remedies available to him. First, Petitioner has never requested discretionary parole which is his only avenue for relief from DHS as an alien detained pursuant to § 1225(b). 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b)."); *see also Morey v. Rodriguez*, 2017 U.S. Dist. LEXIS 151769, at *5 (D.N.J. Sept. 19, 2017) ("Controlling statutes and regulations do not provide for bond hearings concerning persons detained under § 1225(b). Instead, a § 1225(b) detainee who seeks release must seek a discretionary grant of parole from the

Attorney General, through DHS"). For those detained under § 1225(b), like Petitioner, regulations provide that DHS may grant parole if the alien is "neither a security risk nor a risk of absconding," and (1) has a serious medical condition; (2) is pregnant; (3) falls within certain categories of juveniles; (4) will be a witness; or (5) if continued detention is otherwise "not in the public interest." 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c). Indeed, Petitioner has argued in his Petition that he meets these criteria. Pet. ¶¶ 39, 51, 90. Petitioner's failure to seek discretionary parole cannot be overlooked and is grounds for denying the Petition.

Second, as described above, Petitioner's appeal of the IJ's July 31, 2025 decision to deny bond currently is pending before the BIA. Petitioner filed the appeal on August 27, 2025. Until the BIA issues a decision on the appeal, there is no final agency order regarding his request for bond.

Because has not requested discretionary parole and his appeal to the BIA remains pending, Petitioner has not exhausted his administrative remedies, and his Petition should be denied.

A. Petitioner Has Failed to Demonstrate an Exception to the Exhaustion Requirement Applies

In the Second Circuit, courts may excuse exhaustion where certain exceptions apply, including when "(1) available remedies provide no genuine opportunity for relief; (2) irreparable injury may occur without judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry,* 329 F.3d at 62. Even so, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992). Petitioner bears the burden to show that an exception to the exhaustion requirement applies. *See Emery v. Pullen,* No. 22-cv-1003, 2023 WL 348114, *4 (D. Conn. Jan. 20, 2023). Here, Petitioner failed to demonstrate the limited exceptions to exhaustion are applicable.

The first and third exceptions do not apply here. For the reasons set forth in the previous section, Petitioner has several remedies available, including the ability to request discretionary

parole. Petitioner wholly fails to explain why requesting discretionary parole is an inadequate or futile remedy, instead arguing that the *appeal of the bond decision* before the BIA, which is unrelated to discretionary parole, is a protracted process.[3] Pet. ¶¶ 100-103. If granted, parole would give him the relief he seeks from this Court: release from detention.

The second and fourth exceptions also do not help Petitioner. Detention alone is insufficient to excuse exhaustion. *See, e.g.*, *Lallave v. Martinez*, 609 F. Supp. 3d 164, 181 (E.D.N.Y. 2022) (Garaufis, J.) (The "irreparable harm" standard has a similarly high bar. Courts have frequently found that even continued detention does not constitute irreparable harm. . . . Courts find irreparable harm only in exceptional circumstances, such as where a defendant is being held in solitary confinement"); *Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n. 6 (S.D.N.Y. 2017) ("continued detention …is insufficient to qualify as irreparable injury justifying non-exhaustion"). "If incarceration alone were the irreparable injury complained of, then the exception would swallow the [exhausation] rule." *Giwah v. McElroy*, No. 97-cv-2524, 1997 WL 782078, at *4 (S.D.N.Y. Dec. 19, 1997). And, "the presence of constitutional issues alone does not create an automatic exception to the exhaustion requirement." *Able v. U.S.*, 88 F.3d 1280, 1288 (2d Cir. 1996). Here, Petitioner has been detained for less than 90 days and his individual hearing before an IJ, where he may present his asylum claim, has been scheduled expeditiously.

Accordingly, because Petitioner has not exhausted his available administrative remedies and no exception to exhaustion is applicable, the Petitioner should be denied.

II. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225

A. Under the Plain Text of § 1225, Petitioner Must be Detained Pending the Outcome of His Removal Proceeding

[3] Petitioner ignores the fact that his case has been transferred to the Varick Immigration Court's docket and thus has been proceeding expeditiously.

In the present case, Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. To start, Petitioner is an "applicant for admission" to the United States as he is present in the United States without having been admitted. 8 U.S.C. § 1225(a); "'[A]n alien present in the United States who has not been admitted . . . ' is deemed 'an applicant for admission.'" *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (quoting 8 U.S.C. § 1225(a)(1)). As an "applicant for admission," Petitioner is subject to § 1225(b). Next, because Petitioner has been placed in removal proceedings under § 1229a and has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). Indeed, Petitioner *cannot* demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as someone who is present in the United States without being admitted or paroled, he is inadmissible per 8 U.S.C. § 1182(a)(6). Thus, under the plain—and only proper—reading of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A). As the BIA clearly concluded in no uncertain terms in a decision issued on September 5, 2025, "[t]he inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225." *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) (explaining the differences among the different statutorily authorities authorizing detention of aliens subject to removal).

This reading of the statute is supported by the Supreme Court. As explained in *Jennings*, all "applicants for admission" fall into one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). *Jennings*, 583 U.S. at 287. Section 1225(b)(1), on the other hand, applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation and put into expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is "broader"

and "serves as a catchall provision that applies to *all* applicants for admission not covered by 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 837 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens "arriving" in the United States, § 1225(b)(2) applies to all "other" aliens who are applicants for admission—like Petitioner. In other words, an alien does not lose his "applicant for admission" status simply because has been residing in the United States since his unlawfully entry. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) … mandates[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin." (emphasis added)).[4]

Petitioner's argument that the phrase "seeking admission" in § 1225(b)(2)(A) limits its scope is unpersuasive. Pet. ¶ 67. The BIA has long recognized that "many people who are not *actually* requesting permission to enter 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). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by

[4] The only means to obtain release for an applicant for admission is through parole. *See* 8 U.S.C. § 1182(d)(5).

immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

The government respectfully disagrees with reading of § 1225(b)(2)(A) in *Lopez Benitez v. Francis et al.*, No. 25-cv-5937, 2025 WL 2371588, *1 (S.D.N.Y. Aug. 15, 2025). There, the district court reasoned that the ordinary meaning of the words "seeking" and "admission" requires the applicant to actively "be doing something" and used the following analogy. "Someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as the district court already present there." *Id.* at *7. But, this analogy misses the point of a statutorily defined term. 8 U.S.C. § 1101(a)(13) defines "admission" not as mere entry, but the "*lawful* entry of an alien into the United States after inspection and authorization by an immigration officer" (emphasis added). "'When a statute includes an explicit definition, we must follow that definition,' even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149 (2018) (quotation omitted). Thus, a person who is physically present in the United States without "admission," as defined in § 1101(a)(13), remains an "applicant for admission." The *Lopez Benitez* movie theatre analogy therefore fails.

In *Matter of Yajure Hurtado*, the BIA held that the INA requires that all applicants for admission—including who entered the United States without admission or inspection and have been residing in the country for years without lawful status—be subject to mandatory detention for the duration of their immigration proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA rejected the respondent's argument that because respondent has been residing in the

interior of the United States for almost three years, he cannot be considered as "seeking admission" as that phrase is used in § 1225(b)(2)(A):

> Aliens, like the respondent, who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission." *See* INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A) (2018) (defining "admission"). Likewise, being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission. *Id.* at 228.

Petitioner's interpretation, Pet. ¶ 67, also reads "applicant for admission" out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner's interpretation fails that test. It renders the phrase "applicant for admission" "inoperative or superfluous, void or insignificant." *See id.* If Congress did not want § 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Petitioner's argument that § 1226(a) governs his detention instead of § 1225 also is unavailing. Pet. ¶¶ 68-69. Section 1225 narrowly applies only to "applicants for admission." *See Jennings*, 583 U.S. at 287. Section 1226(a), on the other hand, is more general and applies to aliens who were admitted into the United States but, for one reason or another, are deportable have been placed in removal proceedings, such as aliens who were inspected and admitted into the United States and then convicted of certain crimes or overstayed a valid visa. *Jennings*, 583 U.S. at 288. Because Petitioner falls within the narrower category of "applicant for admission," the specific detention authority under § 1225 governs over the general authority found at § 1226(a). When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017); *see also*

Yajure Hurtado, 29 I&N Dec. at 219 ("[8 U.S.C. § 1226] does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth in … 8 U.S.C. § 1225(b)(1), (2)").

Taken together, the plain language of §§ 1225(a) and 1225(b) indicate that applicants for admission, including those "present" in the United States, are subject to mandatory detention during the pendency of their removal proceedings under § 1225(b)(2).

B. Congress Did Not Intend to Treat Aliens Who Unlawfully Enter the Country Better Than Those Who Appear at A Port of Entry

Congress's significant amendments to the immigration laws in the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996), supports the position that "applicants for admission" are properly detained pursuant to 8 U.S.C. § 1225(b). For example, in the IIRIRA, Congress eliminated certain anomalous provisions that favored aliens who illegally entered without inspection, such as Petitioner, over aliens arriving at ports of entry. *Matter of Yajure Hurtado*, 29 I&N Dec. at 223-225 (describing the legislative history of the amendments made by IIRIRA); *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928) ("Congress intended to eliminate the anomaly 'under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry'"); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

Accordingly, even if the statutory text of §§ 1225 and 1226 is vague—which it is not—Congress's clear intent when drafting the IIRIRA supports a statutory interpretation that ensures aliens who enter the United States without inspection, far from a port of entry, and processed and

released outside of a port of entry—such as Petitioner—are not treated better than aliens who present at a port of entry and are subject to mandatory detention under §1225(b).

C. Petitioner's Prior Release by CBP On His Own Recognizance Does Not Change His "Applicant for Admission" Status

Petitioner remains an "applicant for admission" who is seeking admission into the United States, notwithstanding his prior release by CBP on his own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B). "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission,' § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" *Thuraissigiam*, 591 U.S. at 140. By previously citing § 1226(a) when it decided to conditionally release Petitioner, Decl. ¶ 6, DHS did not permanently alter Petitioner's status; to the contrary, an alien's release into the country is expressly subject to an order to appear for removal proceedings based on his *unlawful* entry. Nor is DHS prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g.*, *United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its error).

"[I]t is well-settled that the Government may not be estopped on the same terms as any other litigant." *Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). The Second Circuit has held that 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). Mere negligence is insufficient to show affirmative misconduct. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010). In *Rodriguez-*

Figueroa v. Barr, 442 F. Supp. 3d 549 (W.D.N.Y. 2020), the court concluded that the government could not be estopped from taking the position that Rodriguez-Figueroa, the petitioner, was subject to detention under § 1225(b) simply because the government previously treated him as detained pursuant to § 1226(a). *Id.* at 558-59. The facts of *Rodriguez-Figueroa* are essentially identical to the facts of this case. Rodriguez-Figueroa was detained after being apprehended shortly after unlawfully crossing the border into the United States. *Id.* at 554. He was initially detained under § 1225(b) but later detained under § 1226(a). *Id.* at 558. DHS performed a custody determination pursuant to § 1226 and decided to continue his detention. *Id.* at 554. His NTA classified him as "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien." *Id.* at 558. A Notice of Custody Determination served upon him stated that the determination was made "[p[ursuant to the authority contained in [§ 1226]." *Id.* at 558. The court nevertheless concluded that Rodriguez-Figueroa was at all relevant times detained pursuant to § 1225(b), holding "that an inartfully drafted form, even one that generates confusion, does not rise to anything more than negligence, and thus, is insufficient to estop the Government." *Id.* Thus, Petitioner here cannot rely on equitable estoppel to dispute his detention pursuant to § 1225(b).

III. PETITIONER'S DETENTION DOES NOT VIOLATE DUE PROCESS

Petitioner's claim that his detention violates due process because he was not afforded any individualized custody determination fails. *See* Pet. ¶¶ 101, 110. The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: "[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) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (under the Due Process Clause, applicants for admission have "only those rights regarding admission that Congress has provided by statute"). Congress has decided to treat applicants for admission differently while considering whether to admit them.

Given his status as an "applicant for admission" subject to mandatory detention, Petitioner's application of *Mathews v. Eldridge's*, 424 U.S. 319, 335 (1976), three-factor balancing test is erroneous.[5] For "applicants for admission" like Petitioner, "[w]hatever the procedure authorized by Congress . . . is due process," whether they are apprehended at the border or after entering the country. *Knauff*, 338 U.S. at 544; *accord Thuraissigiam*, 591 U.S. at 138–139 ("This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil."). Petitioner is thus entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

The procedures Congress has established for applicants for admission do not include the provision of a pre-detention individualized determination or post-detention custody determination hearings. Instead, Congress has provided that applicants for admission, *inter alia*, "shall be detained" pending removal proceedings before an IJ, which, in turn, affords the alien a host of procedural protections.[6] *See* 8 U.S.C. § 1229a. Indeed, Petitioner has availed himself of several of

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[5] The Supreme Court has upheld mandatory civil immigration detention without using the *Mathews* balancing test. *See Demore*, 538 U.S. 510 (upholding mandatory detention under § 1226(c)); *cf. Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under § 1231(a)(6) for six months after the 90-day removal period).

[6] During removal proceedings, aliens may apply for various forms of relief or protection from removal, such as asylum, withholding of removal, and protection under the Convention Against Torture. *See, e.g.*, 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). Aliens may obtain continuances during their proceedings for good cause. 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to "examine the evidence against [them]," "to present evidence," and "to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. §§ 1240.7(a), 1240.46(c). Aliens ordered removed may ask the IJ to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They are also informed that they have a right to appeal, 8 U.S.C. § 1229a(c)(5), and they may file an appeal with the BIA, 8 C.F.R. §§ 1003.1(b), 1003.38(a). If an

those protections, including pursuing an asylum application. Moreover, detention under § 1225(b) is inherently temporary and has a discernable end. Here, Petitioner has been detained for less than 90 days and the government has taken several steps to ensure the detention has a discernable end. Since July 1, 2025, when Petitioner was detained, (1) EOIR moved Petitioner's next master hearing from March 2026 to July 21, 2025, (2) Petitioner or his counsel have appeared at three master hearings in Immigration Court, (3) two bond hearings have been conducted by an IJ, and (4) EOIR has scheduled Petitioner's individual hearing, which had not previously been scheduled. Charles Decl. ¶¶ 14-26. At the upcoming individual hearing, Petitioner will have the right to testify and present his asylum claim.

In sum, Petitioner has limited, but substantial, rights as an alien detained pursuant to § 1225(b). Having been placed in removal proceedings, Petitioner has been afforded all the process that he is due, and his continued detention is both authorized by law and comports with his limited due process rights under the Constitution as an "applicant for admission," as discussed *supra*.

IV. PETITIONER IS NOT ENTITLED TO RELEASE PENDING ADJUDICATION

Petitioner has no entitlement to release pending adjudication of the Petition. "[T]he standard for bail pending habeas litigation is a difficult one to meet: The petitioner must demonstrate that the habeas petition raises substantial claims and that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (quoting *Grune v. Coughlin*, 913 F.2d 41, 44 (2d Cir. 1990)). Petitioner can demonstrate neither. As discussed *supra*, Petitioner's detention is mandatory under the INA and CBP's decision to release him on recognizance in March 2024 did not alter his status as an applicant for admission.

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alien appeals and the BIA enters a final removal order, the alien may file a petition for review in a court of appeals, 8 U.S.C. § 1252, and thereafter seek review in the Supreme Court, 28 U.S.C. § 1254(1).

Further, there are no extraordinary circumstances present. Petitioner is subject to routine, mandatory detention under the INA, applicable to any arriving alien who is an applicant for admission. Citing to four news articles that generally describe conditions at MDC, Petitioner argues that there is a "well-founded and well-publicized history of unhealthy and dangerous conditions at MDC." Such generalized allegations cannot be said to be extraordinary. As to *his* detention, Petitioner argues that he has been deprived of his HIV medications and did not receive treatment for his bleeding gums. Pet. ¶¶ 54-56. The Second Circuit has not elaborated in detail on the extraordinary circumstances requirement,[8] but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so that extraordinary action is essential to make collateral review effective. *See, e.g.*, *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992).

None of these circumstances are present here. Although Plaintiff alleges that as of August 29, 2025, he had only two days' worth of HIV medication, Pet. ¶¶ 56, 107, Bureau of Prisons ("BOP") medical records confirm that a 30-day supply of Petitioner's HIV medication was refilled on August 27, 2025 and another 30-day supply will be refilled on September 26, 2025. *See* Declaration of Bruce Bialor, M.D. dated September 12, 2025 ("Bialor Decl."), ¶ 6.[7]

[7] Petitioner also alleges that at some point while at MDC, his gums began bleeding but was offered no diagnosis and no treatment. Pet. ¶ 55. BOP's dental records for Petitioner show that he was seen by a dentist in MDC on August 5, 2025. *See* Bialor Decl., ¶ 7.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Habeas Corpus and grant such other further relief that the Court deems just and proper.

Dated: Brooklyn, New York
September 12, 2025

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CERTIFICATE OF COMPLIANCE

I, Alexandra Megaris, certify that Respondent's Opposition to the Petition for Writ of Habeas Corpus and Response to the Court's Order to Show Cause, dated September 12, 2025, complies with the requirements of Local Rule 7.1(c), in that it contains 7,117 words.

Dated: Brooklyn, New York
September 12, 2025

/s/ Alexandra Megaris
Assistant U.S. Attorney