UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

JHON KEVIN SARMIENTO GUERRERO,

Petitioner-Plaintiff,

v.

KRISTI NOEM, Secretary,
U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director,
U.S. Immigration and Customs Enforcement,
JUDITH ALMODOVAR, Deputy Field Office
Director, U.S. Department of Homeland Security,
PAMELA BONDI, U.S. Attorney General,
U.S. Department of Justice,
RAUL MALDONADO JR., Warden,
Metropolitan Detention Center, Brooklyn,
Federal Bureau of Prisons,

Civil Action No.
25-cv-5881 (EK)

Defendants-Respondents.

----------x

**REPLY MEMORANDUM OF LAW IN RESPONSE TO THE COURT'S ORDER TO SHOWCAUSE WHY THE PETITION FOR A WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED**

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

NICOLE M. ZITO
Assistant United States Attorney
*Of Counsel*

Date of Service: February 6, 2026

## TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... 1

ARGUMENT ..... 2

I. The Petitioner Is Subject To Mandatory Detention Under Section 1225. ..... 2

A. Parolees Are Subject To Mandatory Detention Under Section 1225. ..... 2

B. Seeking Admission Is Not An Affirmative Additional Requirement. ..... 3

C. Authority From The Supreme Court, Other District Courts, And The BIA Confirm That Petitioner Is Covered By Section 1225(b)(2)(A) ..... 7

D. DHS Cannot Be Estopped From Enforcing The INA. ..... 10

CONCLUSION ..... 10

## TABLE OF AUTHORITIES

**Federal Cases**

*Acosta v. Arteta*, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) ..... 8, 9

*Ahmed v. Holder*, 624 F.3d 150 (2d Cir. 2010) ..... 10

*Alves de Andrade v. Patterson*, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) ..... 9

*A.M. v. Joyce*, 2025 WL 3706922 (D. Me. Dec. 22, 2025) ..... 9

*Arana v. Arteta*, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) ..... 6, 8

*Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) ..... 4

*Buenrostro-Mendez v. Bondi*, No. 25-20496, -- F.4th --, 2006 WL 323330 ..... 4, 7, 8

*Calderon Lopez v. Lyons*, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) ..... 9

*Candido v. Bondi*, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) ..... 6, 9

*Castanon-Nava v. DHS*, 494 F.4th 1048 (7th Cir. Dec. 11, 2025) ..... 8

*Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4. 2025) ..... 4, 6, 9

*Chen v. Almodovar,* 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) ..... *passim*

*City of New York v. Shalala*, 34 F.3d 1161 (2d Cir. 1994) ..... 10

*Coppola v. United States*, 938 F. Supp. 204 (S.D.N.Y. 1996) ..... 10

*Coronado v. Sec'y, DHS*, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) ..... 9

*Crespo Tacuri v. Genalo*, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026) ..... 4

*Cruz Rodriguez v. Olson*, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025) ..... 9

*Cruz v. Noem*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) ..... 9

*Diaz v. Noem*, 2026 WL 309938 (N.D. Tex. Feb. 5, 2026) ..... 9

*Duenas Garcia v. ICE*, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) ..... 9

*E.R.J.B. v. Wofford*, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) ..... 9

*Garcia v. U.S. Attn'y Gen.*, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) ..... 9

*Garibay-Robledo v. Noem*, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) ..... 9

*Gomez v. Daley*, 2026 WL 252496 (E.D. Ky, Jan. 30, 2026) ..... 9

*Guevara v. Easterwood*, 2026 WL 278924 (D. Minn. Feb. 3, 2026) ..... 9

*Guillermo N. v. Bondi*, 2026 WL 272403 (D. Minn. Feb. 2, 2026) ..... 9

*Gutierrez Sosa v. Holt*, 2026 WL 36344 (W.D. Okl. Jan. 6, 2026) ..... 9

*Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51 (1984) ..... 10

*Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) ..... 4

*J.U. v. Maldonado*, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) ..... 4

*Jennings v. Rodriguez*, 583 U.S. 281 (2018) ..... 7, 8

*Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) ..... 9

*Liang v. Almodovar,* 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) ..... 6

*Lopez v. Director of Enforcement Operations*, 2026 WL 261938 (S.D. Fl. Jan. 26, 2026) ..... 9

*Lopez v. Noem*, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) ..... 9

*Matter of Lemus-Losa*, 25 I. & N. Dec. 734 (BIA 2012) ..... 3

*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ..... 6, 7, 10

*Melgar v. Bondi*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) ..... 9

*Montoya v. Bondi*, 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) ..... 4

*Montoya v. Holt,* 2025 WL 3733302 (W.D.Okla. Dec. 26, 2025) ..... 7, 9

*Morales v. Noem,* 2026 WL 236307 (S.D. Fl. Jan. 29, 2026) ..... 9

*O.F.B. v. Maldonado*, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) ..... 4

*P. B. v. Bergami*, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) ..... 9

*Padilla v. Galovich*, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) ..... 9

*Parra v. Secretary, Department of Homeland Security*, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026) ..... 9

*Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018) ..... 10

*Quintero v. Francis, et al.*, 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) ..... 9

*Rivera Hernandez v. Noem*, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) ..... 9

*Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025) ..... 9

*Rodriguez v. Noem*, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) ..... 9

*Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) ..... 4

*Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549 (W.D.N.Y. 2020) ..... 10

*Rojas-Hayes v. INS*, 235 F.3d 115 (2d Cir. 2000) ..... 10

*Romero v. Bondi*, 2025 WL 2490659 (E.D. Va. July 2, 2025) ..... 10

*Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) ..... 9

*Texas Dept. of Hous. & Cmty Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) ..... 3

*Topal v. Bondi*, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) ..... 9

*Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) ..... 9

*Weng v. Genalo, et al.*, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) ..... 6

*Ye v. Maldonado*, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) ..... 4

*Zuniga v. Lyons*, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) ..... 9

**Federal Statutes**

8 U.S.C. § 1103(A)(13)(C) ..... 3

8 U.S.C. § 1182(d)(5)(A) ..... 1, 2

8 U.S.C. § 1225 ..... *passim*

8 U.S.C. § 1227(a) ..... 8

8 U.S.C. § 1229a ..... 7

**Federal Regulations**

8 C.F.R. § 212.5(e)(2)(i) ..... 1, 2

## PRELIMINARY STATEMENT[1]

Respondents by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Nicole M. Zito, Assistant United States Attorney, of counsel, respectfully submit this reply memorandum of law in response to the Court's Order directing Respondents to show cause why the Petition should not be granted.

Petitioner is an alien who surreptitiously, and unlawfully, entered the United States from Mexico, without inspection, and without valid entry documents. After Petitioner was encountered by CBP, he was granted humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Respondents established in their January 6, 2026 Opening Memoranda (ECF 23) ("Opening Mem.") that Petitioner, having been granted humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), is subject to mandatory detention under Section 1225(a) based on the plain text of the statute and regulations. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i)).

Petitioner's January 27, 2026 memorandum (ECF 24) ("Opposition" or "Opp.") does not grapple with the fact that the statute and regulations make clear that Respondents were statutorily required to conduct Petitioner's future inspections and hearing under 8 U.S.C. § 1225 after his parole expired (*see* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i)). Instead, Petitioner repeatedly asserts that that plain text of the statute does not apply to him, and that he is not subject to mandatory detention, because he is physically present in the country and not engaged in some affirmative additional action "seeking admission." Under Petitioner's interpretation the touchstone is physical presence. But this re-writes the INA.

In support of his argument, Petitioner also relies on the fact that more courts in the country have adopted his interpretation; however, the number of courts is neither binding, nor persuasive.

[1] All terms and abbreviations have the same definition as in Respondents' Opening Memoranda at ECF 23.

In any event, since the Court issued its Order, the Fifth Circuit Court of Appeals, and many district court judges, including five in this Circuit, have endorsed Respondents' construction of the statutory text. There are also multiple appeals pending in other Circuits, including in this Circuit, and the Seventh Circuit heard oral argument this week.

As set forth in more detail below, and in Respondents' Opening Mem., Respondents respectfully submit that the Court's Order rested on an incorrect interpretation and application of the statutory framework. The Court should, therefore, find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and should deny Petitioner's Petition in its entirety.

## ARGUMENT

### I. The Petitioner Is Subject To Mandatory Detention Under Section 1225.

#### A. Parolees Are Subject To Mandatory Detention Under Section 1225.

Respondents established in their Opening Mem. that after humanitarian parole expires, Respondents are required under the INA to conduct any further inspection or hearing under 8 U.S.C. §§ 1225. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i). ECF 23 at 13-16. Petitioner does not provide any response to this argument in his Opposition. *See generally* ECF 24. The Court should reconsider its Order on this basis alone.

In an attempt to circumvent the plain text of the statute directing Respondents to conduct future inspection and hearings under 8 U.S.C. § 1225, Petitioner argues instead that his parole is irrelevant and that he is not subject to mandatory detention because he is not "seeking admission." ECF 24 at 11, 25-26. However, as set forth in Respondents' Opening Mem., the Court need not determine whether applicant for admission and arriving aliens are separate requirements where, as here, the statute is clear and directs Respondents to subject aliens (like Petitioner) who received humanitarian parole under Section 1182(d)(5)(A) to future inspection and hearings under Section 1225. ECF 23 at 13-16. This clear statutory directive starts and ends the analysis.

**B. Seeking Admission Is Not An Affirmative Additional Requirement.**

Nevertheless, even if the Court were to consider Petitioner's argument that "applicant for admission" and "seeking admission" are different, it is without merit. ECF 24 at 11-16. Section 1225(b)(2) 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) (emphasis added). Congress also 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). "Otherwise'" means 'in a different way or manner.'" *Texas Dept. of Hous. & Cmty Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). As § 1225(a)(3) shows, being an "applicant for admission" is not the exclusive way of "seeking admission." For example, lawful permanent residents returning to the United States are not "applicants for admission" but they still may be "seeking admission" in some circumstances, *e.g.*, if they "ha[ve] been absent from the United States for a continuous period in excess of 180 days." *See* 8 U.S.C. § 1103(A)(13)(C); *Chen*, 2026 WL 100761, at *9 (S.D.N.Y. Jan. 14, 2026). "Seeking admission" is thus "a term of art" that includes aliens, like Petitioner, who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [8 U.S.C. § 1225](a)(1)." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012). As a result, "many people who are not *actually* requesting to be admitted to the United States in the ordinary sense," as is true for Petitioner, "are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743 (emphasis in original).

"[N]othing in the text of Section 1225 or the logic of the immigration system supports a ruling that 'seeking admission' is an *additional requirement* for mandatory detention" for coverage by § 1225. *Chen*, 2025 WL 3484855 at *5; *Chen*, 2026 WL 100761, at *9 (S.D.N.Y. Jan. 14, 2026). Such a conclusion would not only read the "otherwise" modifier out of § 1225(a)(3), but it would create the "perverse" incentive for an alien present here but not admitted to lay in wait and 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 design, "groups together for the same treatment aliens arriving at the border and aliens who are present illegally in the United States." *Id.*

Respondents respectfully submit that the Order and other similar Court decisions[2] viewing "seeking admission" and "applicant for admission" as distinct categories are similarly flawed. These decisions reasoned that the phrase "seeking admission" in § 1225(b)(2)(A) must be distinct from the phrase "applicant for admission" used elsewhere in § 1225, otherwise seeking admission would be superfluous. However, as explained above, and as the Fifth Circuit held, the terms are not superfluous. *Buenrostro-Mendez v. Bondi*, No. 25-20496, -- F.4th --, 2006 WL 323330 (5th Cir. Feb. 6, 2026). Every "applicant for admission" is "seeking admission" and therefore covered by § 1225(b)(2)(A). Congress made the fact that "applicant for admission" is a subset of those who are "seeking admission" clear in § 1225(a)(3), which provides that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). "Seeking admission" is a set, and "applicant for

[2] *See, e.g.*, *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*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J); *J.U. v. Maldonado*, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Artiga v. Genalo*, 2025 WL 2829434, at *7-8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.).

admission" is a subset within that set. *See Chen*, 2026 WL 100761, at *9 (Section 1225 "contemplates that an applicant for admission is one who, by default, is seeking admission"). Congress has nowhere legislated that alien is not "seeking admission" because he has not undertaken some additional affirmative act. Nor has Congress legislated that an alien is not "seeking admission" because he or she entered the country without presenting himself to an immigration officer, and was not encountered by immigration officers until sometime after the illegal entry.

The Honorable John P. Cronan's decision in *Yinxiao Chen v. Almodovar, et al.*, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) in instructive. There, 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 (under much of the reasoning Respondents pressed, *see* Dkt. No. 14 at 20-26) 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"—which is the very argument Respondents advanced. *Yinxiao Chen*, 2026 WL 100761, at *9; Dkt. No. 14 at 24-25. "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.*[3]

Likewise, in *Weng v. Genalo, et al.*, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026), the Honorable Jennifer H. Rearden reasoned that "[r]eading the phrases 'applicant for admission' and 'seeking admission' as synonymous … 'maintains the dichotomy prescribed by Congress…by distinguishing between those who effectuate a lawful entry (even if later found removable) and thus are subject to Section 1226, and those who illegally entered and are statutorily deemed to be applications for admission subject to Section 1225.'"). *Id.* at *4.

Recently in *Arana v. Arteta*, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026), the Honorable Gregory H. Woods found that the Petitioner (who had entered the United States and been present since **2002**) was subject to mandatory detention because "the plain text Section 1225 mandates detention for all "applicants for admission" pending resolution of removal proceedings, irrespective of whether a noncitizen is physically present, or has been residing in, the United States at the time Respondents' detention authority is invoked." *Id.* at *1. Judge Woods' holding is not

[3] Similarly, in *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), the alien entered the United States without having been admitted, was released on his own recognizance, and remained in the country unlawfully for two years until he was recently detained pursuant to § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Id.* at *4. Judge Vyskocil reasoned 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; *see also Liang*, 2025 WL 3641512 (denying petition on substantially similar grounds as in *Chen*, 2025 WL 3484855); *Candido*, 2025 WL 3484932 at *2) (finding detention under § 1225(b)(2)(A) was proper for alien present unlawfully for two decades without having been admitted, noting that "[t]he fact that more district courts . . . have decided this issue differently from this court is neither binding nor persuasive");5 *accord Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 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.").

only consistent with the plain text and legislative history, but it accounts for a critical issue that is not addressed in the Order and other decisions that (incorrectly) hold § 1226(a) applicable to an alien present inside the United States prior to their detention: "How does a court determine when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya v. Holt*, 2025 WL 3733302, at *2 (W.D. Okla). *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.* The BIA has asked a similar question: "If [an alien] is not admitted to the United States . . . but he is not 'seeking admission[,]' . . . then what is his legal status?" *See Matter of Hurtado*, 29 I. & N. at 221.

Accordingly, since Petitioner falls squarely within the statutory definition: he was "present in the United States" and has "not been admitted," Petitioner shall, "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

### C. Authority From The Supreme Court, Other District Courts, And The BIA Confirm That Petitioner Is Covered By Section 1225(b)(2)(A)

While Petitioner attempts to downplay Respondents' arguments, as the Fifth Circuit confirmed, Supreme Court precedent supports, not undermines, Respondents' interpretation. *Buenrostro-Mendez*, No. 25-20496, -- F.4th --, 2006 WL 323330 (5th Cir. Feb. 6, 2026). 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. Section 1225

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.").[4]

Likewise, Petitioner's argument hinges on the fact that more district courts have ruled against the Respondents argument than those who have followed it; however, the persuasiveness of the reasoning, not number is what is relevant. Petitioner's Opposition also overstates the status of the law in this evolving space. For instance, the Opposition states that "one Circuit" court rejected Respondents' arguments. ECF 24 at 8. That is not true. At the time of Petitioner's Opposition there had not been any merits rulings from any Court of Appeals in the United States.[5] The case cited by Petitioner *Castanon-Nava v. DHS, et al.*, 494 F.4th 1048 (7th Cir. Dec. 11, 2025) is not a merits decision.[6] *See* ECF 24 at 18. There, the Seventh Circuit tentatively held in the stay pending appeal context that the plaintiffs had the "better argument" as to those noncitizens who are already in the United States. By contrast, the Fifth Circuit issued a merits decision shortly before this filing in *Buenrostro-Mendez*, No. 25-20496, -- F.4th --, 2006 WL 323330 (5th Cir. Feb. 6, 2026), adopting Respondents' statutory interpretation.

Further, while Respondents do not dispute that a number of non-binding decisions across

---

[4] *Jennings* did not rule on whether non-admitted or inadmissible aliens fell within § 1226(a) as opposed to § 1225(b)(2)(A), which is the issue here. Rather, it held that the duration of detention under either provision is not limited to a six-month time limit. 583 U.S. at 292, 296-306. In reaching that holding, *Jennings* summarized § 1226 as applying to aliens "already in the country," 583 U.S. at 289, and elsewhere characterized it as applying to aliens "once inside the United States," *id.* at 288. When describing the scope of Section 1226, *Jennings* refers to aliens "present in the country" who are removable under 8 U.S.C. § 1227(a) – a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. Respondents' interpretation is consistent with that understanding: Section 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States but are now removable. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* "alien[] already in the country," and the passage's use of the word "certain" conveys the opposite. Nothing in *Jennings* therefore displaces the statute's plain text and the manifest congressional purpose.

[5] There are defensive and affirmative appeals pending on this issue in multiple circuits, including in the First (Dkt. 25-1996), Second (Dkt. 25-3141 – expedited briefing concludes 03/03/26), Fifth (Dkt. 25-20496 and 25-40701), Sixth (Dkt. 25-1982), Seventh (Dkt. 25-3050), Eighth (Dkt. 25-3248), Ninth (Dkt. 25-6842), and Eleventh (Dkt. 25-14065).

[6] The Seventh Circuit heard oral argument on the merits in *Castanon Nava, et al v. DHS, et al.*, 25-3050 on February 3, 2026.

the country have rejected Respondents' argument, Petitioner's citation to a November 2025 appendix is misleading as to the current status of this rapidly evolving area of law. ECF 24 at 18. For instance, there are decisions by five judges in the Second Circuit, including four in the Southern District of New York, that have since adopted Respondents' interpretation. *See e.g.*, *Arana v. Arteta*, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Acosta v. Arteta*, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Lopez v. Noem*, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Quintero,* 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Yinxiao Chen v. Almodovar,* 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4. 2025) (Vyskocil, J.), *appeal filed* Dec. 16, 2025, No. 25-3169 (2d Cir.); *Candido v. Bondi*, (Sinatra, J.), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025), *appeal filed* Dec. 16, 2025, No. 25-3159 (2d Cir.). Numerous Courts outside this Circuit have also held similarly since the Court's Order.[7]

The conclusion that Petitioner is detained under § 1225(b)(2)(A) 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

[7] *See e.g.*, *Diaz v. Noem*, 2026 WL 309938 (N.D. Tex. Feb. 5, 2026); *Guevara v. Easterwood*, 2026 WL 278924 (D. Minn. Feb. 3, 2026); *Guillermo N. v. Bondi*, 2026 WL 272403 (D. Minn. Feb. 2, 2026); *Gomez v. Daley*, 2026 WL 252496 (E.D. Ky, Jan. 30, 2026); *Morales v. Noem,* 2026 WL 236307 (S.D. Fl. Jan. 29, 2026); *Lopez v. Director of Enforcement Operations*, 2026 WL 261938 (S.D. Fl. Jan. 26, 2026); *Parra v. Secretary, DHS*, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026); *Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Zuniga v. Lyons*, 2025 WL 3755126 (N.D. Tex. Dec. 29, 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); *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); *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); *Duenas Garcia v. ICE*, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025); *Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alves de Andrade v. Patterson,* 2025 WL 3252707 (W.D. La. Nov. 21, 2025).

proceedings and are "ineligible for a bond hearing." *Id.* at 225. Like the aliens in the foregoing cases, Petitioner is subject to mandatory detention.

**D. DHS Cannot Be Estopped From Enforcing The INA.**

Petitioner argues that Respondents should be estopped from detaining him and from enforcing the INA as written because (i) prior practice of not enforcing the law and (ii) his June 9, 2025 Form I-200, Warrant for Arrest of Alien and Form I-286, Notice of Custody Determination reflects in error that Petitioner would be detained pursuant to the authority contained in "Section 236" of the INA. ECF 24 at 20-25. Petitioner is wrong.

As an initial matter, the Supreme Court has rejected Petitioner's argument that longstanding government interpretations can supersede the plain language and requirements of the INA. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). Moreover, "it 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 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). In order to apply estoppel against the Government, there must be a showing of "affirmative misconduct" by the Government, as well as reasonable and detrimental reliance. *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994). Mere negligence is insufficient. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010). Petitioner cannot demonstrate any such affirmative misconduct here. *See, e.g.*, *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549 (W.D.N.Y. 2020); *Romero v. Bondi*, 25-cv-993, 2025 WL 2490659, *2-3 (E.D. Va. July 2, 2025).

## CONCLUSION

Respondents respectfully request that the Court deny the Petition.

Dated: February 6, 2026
Brooklyn, New York

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

By: */s/ Nicole M. Zito*
Nicole M. Zito
Assistant United States Attorney
(718) 254-6008
Nicole.Zito@usdoj.gov