UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ERIKA RODRIGUEZ-ACURIO,

Petitioner,

v.

JUDITH ALMODOVAR, Acting Director of the New York City Field Office of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA BONDI, Attorney General,

Respondents.

Civil Action No. 25-cv-6065

(Choudhury, J.)

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MEMORANDUM OF LAW IN RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE WHY THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED AND IN OPPOSITION TO THE PETITION

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PRELIMINARY STATEMENT

Respondents Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), New York City Field Office Judith Almodovar; Secretary of the U.S. Department of Homeland Security ("DHS") Kristi Noem; and U.S. Attorney General Pamela Bondi (collectively, "Respondents"), by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Thomas R. Price and Mary M. Dickman, Assistant United States Attorneys, of counsel, respectfully submit this memorandum of law in response to the Court's Corrected Order to Show Cause, dated October 30, 2025 (the "OTSC") (ECF No. 9) and in opposition to the Petition for Writ of Habeas Corpus ("Petition") (ECF No. 1).

Petitioner Erika Rodriguez-Acurio ("Petitioner") is an applicant for admission from Ecuador who entered the United States without inspection and without presenting herself to an immigration officer for inspection at a designated port of entry. She was apprehended by DHS officials, determined to be inadmissible, and placed into expedited removal. ICE granted Petitioner discretionary parole, pursuant to its authority under 8 U.S.C. § 1182(d)(5)(A) which was valid for only one year. She was not admitted. Instead, she was advised that she was being released from ICE custody pending a final decision on her removal hearing. Petitioner's parole expired on September 14, 2022. On or about September 26, 2024, Petitioner submitted an I-589, Application for Asylum and for Withholding of Removal (the "I-589"). The I-589 was dismissed on June 13, 2025, and Petitioner was advised that her claim of fear would be considered by an asylum officer through a credible fear screening process pursuant to 8 C.F.R. § 208.30. On October 29, 2025, Petitioner appeared for her credible fear interview at the United States Citizenship and Immigration Services ("USCIS") Field Office in Bethpage, New York. A credible-fear determination is pending. As an applicant for admission whose parole expired more than two years ago, she is detained under 8 U.S.C. § 1225(b)(1).

Petitioner filed this Petition on October 29, 2025, contending, *inter alia*, that her detention violates her constitutional right to due process under the Fifth Amendment and the requirements of 8 U.S.C. § 1226(a), and seeking immediate release from custody.

Petitioner's claims must fail. Petitioner is not, nor has she ever been, detained pursuant to 8 U.S.C. § 1226(a). Moreover, ICE's actions do not violate her rights because the process owed to her is set forth by Congress, and the detention appurtenant to removal proceedings to applicants for admission – a category in which Petitioner inarguably falls – is mandatory under 8 USC §§ 1225(b)(1).

RELEVANT STATUTORY AND REGULATORY FRAMEWORK

Prior to 1996, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). This is because, the then INA provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted were subject to mandatory detention, 8 U.S.C. § 1225(a)-(b) (1995), whereas aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231 were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995). 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, among other things, substituted the term "admission" for the term "entry."[1]

[1] The legislative history is consistent with this, noting that Congress "intended to replace certain aspects of the [then-] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain[ed] equities and privileges in immigration proceedings that [we]re not available to aliens who present themselves for inspection at a port of entry. The House Report further explained: "Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B)," rather than being subject to more summary exclusion proceedings, but "under the new 'admission' doctrine, such aliens will not be considered to have been admitted." *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 226).

Relatedly, Title 8 U.S.C. § 1225(a)(1), was added to the INA as part of IIRIRA, and provides 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). Thus, this eliminated the prior distinction in process provided to aliens appearing at ports of entry and those who were encountered after sneaking across the border.[2] The INA also now defines "admission" as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

As reflected in the INA today, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *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)).

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225. As explained above, an applicant for admission, includes those who are *present* in the United States, but who have not been admitted. 8 U.S.C. § 1225(a)(1) ("an alien present in the United States who has not been admitted .... Shall be deemed for purposed of this chapter an applicant for admission"). And, the INA defines "admission as the "lawful entry" of the alien after inspection by an immigration officer. 8 U.S.C. § 1101(13)(A).

Applicants for admission fall into one of two categories, "those covered by § 1225(b)(1)

[2] Indeed, as reflected in the legislative history, IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." H.R. Rep. 104-469, pt. 1, at 225.

and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to applicants for admission "who have been initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" and "certain other aliens designated by the Attorney General in his discretion." *Id.*; *see also* 8 U.S.C. §§ 1182(a)(6)(C) (inadmissibility due to fraud); 1182(a)(7) (inadmissibility due to misrepresentation); 1225(b)(1)(A)(iii) (applying § 1225(b)(1) to an alien who has not been admitted or paroled into the United States, and has failed to show that he or she has been physically present in the United States continuously for the two-year period prior to the date of a determination of inadmissibility). Section 1225(b)(1) provides for the inspection of such aliens who assert a credible fear of persecution and mandates detention of such aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). Section 1225(b)(2) is broader and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287.

In both instances detention is mandatory. Section 1225(b)(1) provides for the inspection of applicants for admission and subjects them to expedited removal, unless they identify a fear of persecution and seek asylum. 8 U.S.C.§ 1225(b)(1)(A)(i). Those who seek asylum are placed, after passing a credible fear interview, into removal proceedings, where they may submit an asylum application, but they remain subject to mandatory detention during the pendency of those proceedings. 8 U.S.C.§ 1225(b)(2)(A); *Jennings*, 583 U.S. at 299. And, relevant here, §1225(b)(2)(A) provides for the inspection of all "other" applicants for admission and states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving

in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded'") (quoting *Jennings*, 583 U.S. at 299).

Section 1225(b)(1) and (2) contain no provision for a bond hearing, but aliens subject to § 1225(b)(1) and (2) may be released on parole under 8 U.S.C. § 1182(d)(5)(A), which authorizes parole for "urgent humanitarian reasons or significant public benefit." Notably, as relevant here, when an alien is discretionarily paroled into the United States, the parolee *remains* both an applicant for admission and an arriving alien. 8 USC § 1182(d)(5)(A) ("parole of such alien shall not be regarded as an admission of the alien"); 8 U.S.C. § 1101(13)(B); 8 C.F.R. § 1.2 ("An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked"). Discretionary parole terminates automatically at its expiration, and no written notice is required. 8 C.F.R. § 212.5(e)(1)(ii). After discretionary parole expires, the alien is restored to the status that he had at the time of parole, and any further inspection or hearing shall be conducted under 8 U.S.C. §§ 1225 or 1229a [INA §§ 235 or 240]. 8 USC § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i).

The next section of the same title, Section 1226, as amended by the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025) ("LRA"), governs aliens who are removable under specified provisions of 8 U.S.C. § 1227(a). Among the types of aliens removable under § 1227(a) are those who were inadmissible at the time of entry or who have been convicted of certain criminal offenses after being admitted. *Jennings*, 583 U.S. at 288. Detention under Section 1226(c) lacks a parole option. In particular, while Section 1226(a) provides that the Attorney General "may release" an alien detained under that subsection "on . . . bond" or on "conditional parole," the Attorney General may not do so if the alien falls within categories of aliens as set forth in § 1226(c). *Id.* at 287-89.

Rather, DHS "may release aliens in those categories 'only if [DHS] decides . . . that release of the alien from custody is necessary for witness-protection purposes and 'the alien satisfies [DHS] that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.'" *Id.* at 289 (quoting § 1226(c)(2)) (now codified as § 1226(c)(4)). The LRA added § 1226 (c)(1)(E)(i),(ii), (2) and (3). Under the LRA, an alien who is inadmissible under §§ 1182(a)(6)(C) or 1182(a)(7), and is charged with, arrested for, or convicted of, specified types of crimes, shall be detained by DHS "if not otherwise detained by Federal, State, or local officials." Such an alien is not eligible for parole and may only be released from custody for the same reasons set forth in § 1226(c)(4) as other aliens subject to mandatory detention under § 1226(c).

Conditional parole, pursuant to § 1226(a), and "parole into the United States," pursuant to § 1182(d)(5)(A), "serve distinct functions." *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011). Section 1182(d)(5)(A) parole into the United States "allows the executive to permit certain aliens 'on a case-by-case basis' to enter or remain in this country only for 'urgent humanitarian reasons or significant public benefit.' While such parole does not grant the alien 'admission' to the United States, it effectively halts removal of the alien until the underlying humanitarian or public benefit purpose is achieved." *Id.* (internal citations omitted). However, "after [the] purpose of parole has been served, [the] alien's status reverts to that which he had at the time he was inspected and paroled into the United States, and 'thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission.'" *Id.* (quoting § 1182(d)(5)(A)). In contrast, "conditional parole under § 1226(a)(2)(B) does not mean that the alien has been accepted into the country, even temporarily." *Id.* ("Congress 'did not view 'conditional parole' as the equivalent of 'parole into the United States'"); *see Torres-Castillo v. Holder*, 425 Fed App'x 49,

50 (2d Cir. June 29, 2011) (stating that *Cruz-Miguel* "explicitly rejected the 'unitary view of parole'" argument).

Also relevant here, 8 C.F.R. § 208.30(a) grants DHS "exclusive jurisdiction to make determinations" regarding claims of credible fear by, *inter alia*, applicants for admission found inadmissible pursuant to sections 212(a)(6)(C) or 212(a)(7) of the INA (8 U.S.C. §§ 1182(a)(6)(C) and (a)(7), respectively).

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Ecuador. Petition ("Pet.") ¶¶ 1, 11; Declaration of Jason V. Langlois, dated November 3, 2025 ("Langlois Decl.") ¶ 3. On September 4, 2021, Petitioner was encountered by Customs and Border Protection ("CBP") officers near the port of entry in Eagle Pass, Texas. Langlois Decl. ¶ 3. Petitioner did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, rendering her inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I) [Immigration and Nationality Act ("INA") § 212(a)(7)(i)(I)]. *Id.* She was transported to the Carrizo Springs, Texas, Border Patrol Station for further processing. *Id.* During her processing, Petitioner admitted to having illegally entered the United States near Eagle Pass, Texas, without inspection on or about September 4, 2021, without the necessary documents to enter, pass through, or remain in the United States. *Id.*

On September 6, 2021, Petitioner was served with a Notice and Order of Expedited Removal, Form I-860 ("I-860"). *Id.* ¶ 4. Petitioner also claimed a fear of being returned to her home country. *Id.* ¶ 5. She was provided with a Spanish language version of Form M-444, which informed her of her rights in connection with a credible fear interview. *Id.*; *see also* Decl. Exh. A.

On or about September 8, 2021, Petitioner was transferred to the custody of ICE and detained at the T. Don Hutto Detention Center in Taylor, Texas. *Id.* ¶ 6.

On September 14, 2021, after considering risk factors then existing that may have placed Petitioner at heightened risk if she were to contract the COVID-19 virus, ICE opted to temporarily parole Petitioner from ICE custody. *Id.* ¶ 7. On that day, ICE issued an Interim Notice Authorizing Parole (the "Parole Notice"), which granted Petitioner parole from ICE custody "pursuant to its authority under section 212(d)(5)(A) of the Immigration and Nationality Act [8 U.S.C. § 1182(d)(5)(A)]." *See id.* ¶ 7; *see also* Pet. Exhibit A. The Parole Notice notified Petitioner that:

> Your parole authorization is *valid for one year* beginning from the date on this notice and *will automatically terminate upon* your departure or removal from the United States or at *the end of the one-year period* unless ICE provides you with an extension at its discretion. ICE may also terminate parole on notice prior to the automatic termination date. *Parole is entirely within the discretion of ICE* and can be *terminated at any time and for any reason. Your parole is not* valid for work authorization and is not *an admission in lawful status.*

Id. (emphasis added). The Parole Notice further notified Petitioner that she had "been released from service custody pending a final decision in your exclusion/deportation hearing." Pet. Exh. A at 2.

On September 17, 2021, Petitioner was temporarily paroled from ICE custody pursuant to 8 U.S.C. § 1182(d)(5), in accordance with the terms and conditions outlined in the Parole Notice. Langlois Decl. ¶ 8. Petitioner was directed to report to the ICE New York Field Office on October 21, 2021. *Id.*

On September 21, 2021, Petitioner reported to the ICE New York Field Office as directed. *Id.* ¶ 9. Petitioner was not then, nor has she since been, admitted to the United States, nor is there any record of the Petitioner having departed the United States at any time between September 14, 2021 and September 14, 2022. *Id.* On September 14, 2022, Petitioner's parole authorization automatically expired per the terms outlined in the Parole Notice. *Id.* ¶ 10; *see* Pet. Exh. A. at 1.

On September 26, 2024, USCIS received a Form I-589, Application for Asylum and for Withholding of Removal (the "I-589") which had been submitted by or on behalf of Petitioner. *See* Pet. ¶ 17; Pet. Exh. C.

On June 13, 2025, USCIS issued a Notice of Dismissal of Form I-589. *See* Pet. Exh. D. USCIS rejected Petitioner's I-589 because she was in removal proceedings. *See id.* ("[Y]ou were apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal. The asylum office cannot process your Form I-589 at this time. However, your claim of fear will be considered by an asylum officer through the credible fear screening process pursuant to 8 C.F.R. 208.30.").

On October 29, 2025, Petitioner appeared for her credible fear interview. *See* Pet. ¶ 18; Pet. Exh. E (Affirmation of Johathan Lipsitz dated October 29, 2025) ("Lipsitz Aff."). After her interview, Petitioner was detained by ICE. *Id.*; *see also* Langlois Decl. ¶¶ 10-11. After her interview, Petitioner was detained by ICE pursuant to 8 C.F.R. § 235.3(b)(2)(iii) and 8 U.S.C. § 1225(b)(1) and transported to 100 Federal Plaza, Central Islip, New York, for processing. *Id.*; see Langlois Decl. ¶¶ 11-12. On October 30, 2025, Petitioner was transferred to the ICE holding facility at 26 Federal Plaza, New York, New York, where she presently remains.[3] *Id.* ¶ 14.

At no time has Petitioner been admitted to the United States. *Id.* ¶ 16.

On October 29, 2025, Petitioner filed this action seeking a writ of *habeas corpus* and asserting two claims: (i) violation of procedural due process; and (ii) violation of 8 U.S.C. § 1226(a). *See* Pet. at 9-11.

[3] Pursuant to the Court's OTSC, Respondents are restrained from transferring Petitioner outside of this district, the Southern District of New York, or the District of New Jersey. However, there are no ICE facilities in the E.D.N.Y. or S.D.N.Y. that have bed space for females, and the ICE facility in New Jersey, which has female bed space, is presently full. Langlois Decl. ¶¶ 14-15. As a result, Respondents have no choice but to hold Petitioner at 26 Federal Plaza, which is not a designated detention space but, instead a processing space, which does not have shower facilities or beds. *Id.* ¶ 15.

ARGUMENT

I. The Petition Should Be Denied Because It Fails to State a Claim for Violation of Procedural Due Process (Count I)

Petitioner's claim that her detention violates procedural due process is insufficient as a matter of law. w. *See* Pet. ¶¶ 26-31. To state a claim for procedural due process, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due to the plaintiff, which process is circumstance-specific. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge,* 424 U.S. 319, 334 (1976)) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.") As explained below, Petitioner cannot identify any process that is due to her that she has not received. Instead, applicants for admission into the United States, like Petitioner, have limited process afforded by Congress. That process includes mandatory detention pending removal and the opportunity for release on parole, not bond. Petitioner has received, and continues to receive, all the process due to her.

i. Applicants For Admission Have Only Those Due Process Rights That Congress Has Provided by Statute

The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine "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).

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[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)), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *Knauff*, 338 U.S. at 543.[4]

The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). As the Supreme Court explained, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. The Court 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 explained that aliens arrested after crossing the border have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140. The Court was clear: "the Due Process Clause provides nothing more" than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if she fears return to her home country and seek parole from the agency. *Id.*

Courts have applied this entry fiction to aliens with sympathetic claims, including those who have "entered" and who have developed significant ties to this country during this time. *See*

[4] Because different process is afforded different classes of aliens, Petitioner's reliance on generalized statements of due process law is a red herring. *See* Pet. ¶ 28; *see also, e.g., Mathews v. Diaz*, 426 U.S. 67, 78–80 (1976) ("The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. For a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country. In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens. The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of its own citizenry.").

e.g., *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that 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) ("In concluding that Thuraissigiam's due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d. 200, 219-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute, and concluding that alien previously released from custody but not lawfully admitted was still considered "at the threshold of initial entry" over one year later for immigration purposes such that Section 1225 still applied); *Salim v. Tryon*, No. 13-cv-6659, 2014 WL 1664413, *2 (W.D.N.Y. Apr. 25, 2014) ("The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings."); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (holding that petitioner paroled into the United States and continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due process if whatever procedure has been authorized by Congress") (cleaned up); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20-cv-159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) (concluding that plaintiff was subject to Section 1225 notwithstanding her "physical presence . . . in the United States for a lengthy period" and stating that "applying this rule in *Thuraissigiam*, which squares with longstanding Supreme

Court precedent, this Court similarly holds that arriving aliens' procedural due process rights entitle them only to the relief provided by the INA").

ii. Under The Plain Text of § 1225, Petitioner Must Be Detained Pending The Outcome of Her Removal Proceeding And Is Ineligible for Bond

In the present case, Petitioner falls squarely within the ambit of § 1225(b)(2)'s mandatory detention requirement. To start, Petitioner is an "applicant for admission" to the United States as she 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.'" *Thuraissigiam*, 591 U.S. at 109 (quoting 8 U.S.C. § 1225(a)(1)).

As explained above, as an "applicant for admission," Petitioner is subject to § 1225(b). Thus, under the plain reading of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b). *See 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."); *Pena v. Hyde*, 25-11983-NMG, 2025 WL 2108913, *1 (D. Mass. July 28, 2025) (an alien remains an applicant for admission subject to detention under 1225(b)(2) if he "is present in the country but has not yet been lawfully granted admission"); *Rojas v. Olsen et al.*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (finding that petitioner who lived in the United States for seven years was properly subject to mandatory detention under Section 1225 because he was present without admission.).

This reading of the statute also 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) applies to aliens arriving in the United States who are applicants for admission and assert a credible fear of persecution, and it mandates detention of such aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

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)." *Jennings*, 583 U.S. at 837 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens "arriving" in the United States and § 1225(b)(2) applies to all "other" aliens who are applicants for admission, an alien does not lose his "applicant for admission" status simply because has been residing in the United States since his unlawful entry as Petitioner suggests.[5] Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings.[6] *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)).

Taken together, the plain language of §§ 1225(a) and 1225(b) make it clear 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) and are not eligible for a bond. Thus, here, as in *Thuraissigiam*, because Petitioner is an inadmissible applicant for admission, he "requests a privilege and has no constitutional rights regarding his application[.]" *See Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right."). Instead, Petitioner has "only those rights regarding admission that Congress has provided by statute." *See Thuraissigiam*, 591 U.S. at 140; *cf. 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

[5] Petitioner's construction not only lacks basis in the law, but is untenable. For instance, how much time is necessary to find that an alien, living in the United States unlawfully and without authorization, is no longer seeking admission, but rather already present (i.e., 6 months, 1 year, 2 years)?

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

process protections of the Fifth Amendment"). The statutory framework enacted by Congress requires that Petitioner be detained.

Petitioner's prior temporary parole is consistent with, and does not change, her status as an applicant for admission. The statute is clear that when an alien is discretionarily paroled into the United States, the parolee *remains* both an applicant for admission and an arriving alien. 8 USC § 1182(d)(5)(A) ("parole of such alien shall not be regarded as an admission of the alien"); 8 U.S.C. § 1101(13)(B); 8 C.F.R. § 1.2 ("An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked"). And, after discretionary parole expires, the alien is restored to the status that he had at the time of parole, and any further inspection or hearing shall be conducted under 8 U.S.C. §§ 1225 or 1229a [INA §§ 235 or 240]. 8 USC § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i). Controlling precedent from the Supreme Court and the Second Circuit confirm the same. *See e.g.*, *Thuraissigiam*, 591 U.S. at 139-40 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (parole is not an "admission" into the United States and that a paroled alien is treated for constitutional purposes "'as if stopped at the border.'"); *United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) ("Parole does not change parolees' immigration status: they remain 'at the border' for the purposes of immigration law and are treated as applicants for admission into the country."); *United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution."). Petitioner is therefore an applicant for admission.

The plain text of the statute governs and the Court's analysis should end there.

Respondents' statutory construction regarding mandatory detention for all applicants for admission, including those physically present in the United States for some period of time, is

further supported by the legislative history of the relevant INA provisions. As explained above, prior to 1996, the INA incentivized aliens to enter the United States surreptitiously, because it provided aliens who entered without inspection with more process and protections (including bond) than aliens "seeking admission" at a port of entry (requiring mandatory detention). *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995). IIRIRA sought to correct this disparity by adding Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." H.R. Rep. 104-469, pt. 1, at 225. Hence, the pivotal factor in determining an alien's status after IIRIRA is "whether or not the alien has been lawfully admitted," not whether they have physically entered the United States. *Matter of Yajure Hurtado*, 29 I&N Dec. at 223-24 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). Petitioner's reading of the INA ignores the context and purpose of IIRIRA – to ensure that aliens who enter the country illegally are not treated more favorably than those who seek admission through the proper channels.

Respondents' construction of the INA, consistent with the text of the statute and Supreme Court jurisprudence, is further bolstered by recent persuasive precedent from the BIA – the highest administrative body for interpreting and applying the INA.[7] Specifically, in *Matter of Yajure 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 have been residing in the country for years without lawful status—be subject to mandatory detention for the duration of their

[7] While BIA decisions are not binding on this Court, *Matter of Yajure Hurtado* is consistent with the plain language of the relevant statutes, legislative history, and Supreme Court precedent, as discussed further herein. *See Fernandez Arevalo v. Bondi*, 130 F.4th 325, 335-36 (2d Cir. 2025) (construing an INA statute in the same manner as a BIA decision that was consistent with Article III case law, notwithstanding *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024)).

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. The BIA found that, because the respondent was subject to mandatory detention, he was "ineligible for a bond hearing." *Id.* at 225.

Respondents' position is further bolstered by the legislative history of the relevant INA provisions. Prior to 1996, the INA provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted were subject to mandatory detention, 8 U.S.C. § 1225(a)-(b) (1995), whereas aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231 were taken into custody under the authority of an arrest warrant and, like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995). 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, among other things, substituted the term "admission" for the term "entry," and in doing so, "intended to replace certain aspects of the [then-] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain[ed] equities and privileges in immigration proceedings that [we]re not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted," not whether they have physically entered the United States. *Matter of Yajure Hurtado*,

29 I&N Dec. at 223-24 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). The House Report further explained: "Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B)," rather than being subject to more summary exclusion proceedings, but "[u]nder the new 'admission' doctrine, such aliens will not be considered to have been admitted." *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 226). Accordingly, in addition to the plain language of the relevant statutes, the legislative history demonstrates that Petitioner is an applicant for admission subject to mandatory detention under § 1225(b)(2). *See also Chavez v. Noem*, -- F. Supp. 3d --, --, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) ("Prior to IIRIRA, an 'anomaly' existed 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.' . . . The addition of § 1225(a)(1) 'ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'") (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

iii. Recent Decisions Cited by Petitioner Misinterpret the Distinctions Between § 1225 and § 1226 and Should Not be Adopted by This Court

For the above reasons, Respondents respectfully disagree with the recent decisions from this district cited by Petitioner (¶¶ 25, 28). *See, e.g., J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434, at *7-8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.); *Hyppolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.). In these cases, the courts reasoned that the phrase "seeking admission" in Section 1225(b) had to be distinct from the phrase "applicant for admission" in the same statute, otherwise it would be superfluous. *Id.* But this conclusion ignores the fact that 8 U.S.C. § 1225(a)(1) expressly provides 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). Thus, it was Congress, not the executive branch, that deemed all aliens present in the United States who have not been admitted as "applicants for admission," regardless of whether they are in fact actively "seeking admission." *See Chavez*, 2025 WL 2730228, at *4 (aliens who were present in the United States and have not been admitted are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)). Congress further made this clear in section 1225(a)(3), which requires all aliens "who are applicants for admission *or otherwise* seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3) (emphasis added).

Each of the above cited cases relied, in part, on the decision in *Lopez Benitez v. Francis et al.*, No. 25-cv-5937, 2025 WL 2371588, at *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 impermissibly disregards the significance of a statutorily defined term. The INA § 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." 8 U.S.C. § 1101(a)(13) (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, 160 (2018) (quotation omitted). Thus, a person who is physically present in the United States without lawful "admission," as defined in § 1101(a)(13), remains an "applicant for admission." The *Lopez Benitez*

movie theater analogy therefore fails. For similar reasons, the out-of-circuit cases cited by Petitioner (¶ 24) are also unavailing.

Instead, this Court should follow the reasoning of the Court in *Rojas*, 2025 WL 3033967, at *8. In *Rojas*, the petitioner, an alien and citizen of Mexico, argued, among other things, that his detention should be subject to Section 1226 because he had been living in the United States for seven years -- albeit without admission or authorization -- at the time of his detention. *Id.* The Court rejected petitioner's arguments that he was not seeking admission because he was not being detained presently at the border and found, instead, found that respondents' textual argument was correct. *Id.* Specifically, in holding that petitioner was subject to Section 1225's mandatory detention provision, the Court reasoned that it could not find a statutory basis to exclude the petitioner from the definition of "applicant for admission" given that he "is an alien "present" in the United States and he has not been "admitted."" *Id. Accord*, *Barrios Sandoval v. Acuna*, 2025 WL 3048926, at *5-7 (W.D. La. Oct. 31, 2025).

This reasoning is consistent with, as discussed above, the legislative history of IIRIRA, which reflects that Congress intended to do away with a system in 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." *Matter of Yajure Hurtado*, 29 I&N Dec. at 223-24 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). Interpreting Section 1225 to authorize mandatory detention for aliens actively seeking admission at ports of entry but not for those who attempt to evade inspection—such as Petitioner—would contradict Congressional intent.

Respondents' interpretation of section 1225(b)(1) also does not render superfluous the mandatory detention provisions of 8 U.S.C. § 1226(c). The mandatory detention provisions of §

1226(c) – which apply only to certain types of aliens – differ from the mandatory detention provisions of § 1225(b)(2) in a least one important respect. An alien detained under § 1226(c) may be released only on grounds set forth in § 1226(c)(4) – *i.e.*, if the release "is necessary to provide protection to a person who is a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate" of such persons; and if the alien "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." By contrast, a person subject to mandatory detention under § 1225(b)(2) may be released on parole under 8 U.S.C. § 1182(d)(5)(A) for "urgent humanitarian reasons or significant public benefit," a standard that differs from the § 1226(c)(4) standard. Thus, there is no superfluity between § 1225(b)(2), on the one hand, and § 1226(c) – both before and after it was amended by the LRA – on the other hand. As another district court has recognized, the LRA "simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes." *Chavez*, 2025 WL 2730228, at *5. District court decisions to the contrary do not take account of the different options for release that the LRA precluded to certain individuals, and are therefore incorrect in identifying the LRA as evidence that the government's position was in error. *J.U.*, 2025 WL 2772765, at *7; *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *8. Indeed, in *Artiga*, the district judge recognized that parole is a form of relief from mandatory detention under Section 1225, yet failed to acknowledge that the LRA precluded certain applicants for admission who had been charged with certain crimes from that benefit by making detention mandatory under a statute that did not afford that relief.

In sum, the plain language and legislative history of the relevant statutes support the conclusion that aliens such as Petitioner are applicants for admission subject to mandatory

detention under § 1225. As such, Petitioner has received all of the process that was due to her under § 1225 and therefore has failed to state a claim of a due process violation.

To the extent that Petitioner may argue that Respondents should be estopped from detaining her as an applicant for admission because they did not do so for more than two years after her parole expired, "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 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 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). In particular, a party must establish "*both* that the Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.". *Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (quoting *Shalala,* 34 F.3d at 1168) (emphasis added). Mere negligence is insufficient to show affirmative misconduct. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010). Additionally, "principles of laches or estoppel do not bar [the government] from enforcing ordinances that have been allowed to lie fallow." *Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 111 (2d Cir. 2010).

Here, Petitioner cannot cite any misrepresentation upon which she relied, or that the government engaged in any misconduct. To the contrary, the Parole Notice expressly informed her that her parole was valid for only one year and that it would automatically expire at the end of that year. *See* Pet. Exh. A. The Parole Notice further informed her that it did *not* constitute "an

admission in lawful status." *Id.* Moreover, it also advised that her parole could be "terminated at any time and for any reason." *Id.* Finally, the relevant statute provides that, upon termination, or when "the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served," Petitioner was required to "return or be returned to the custody from which [she] was paroled". 8 U.S.C. § 1182(d)(5)(A). In sum, ICE's detention of Petitioner was not merely authorized, but in fact mandated, by § 1182(d)(5)(A). Thus, because there was no misrepresentation or misconduct on the part of ICE, Petitioner here cannot rely on equitable estoppel to dispute her detention pursuant to § 1225(b).

II. Petitioner Fails to State a Claim for a Violation of 8 U.S.C. § 1226 or Entitlement to a Bond Hearing (Count II)

Petitioner also alleges that Respondents' actions violate her rights under § 1226. *See* Pet. at ¶¶ 32-35.. Specifically, she asserts that ICE impermissibly detained her under § 1225 based upon a "flawed reading of the INA," and thus the detention "should be considered unreasonable *ab initio* and the Government should be ordered to release [her] immediately." *Id.* ¶¶ 33-34. Alternatively, Petitioner asserts that at "a bare minimum" Respondents should be directed to provide her with a bond hearing before an immigration judge to justify any further detention. *Id.* ¶ 35.

As set forth above, Respondents' interpretation of §§ 1182(d)(5)(A) and § 1225(b) are consistent with the statutory text and relevant case law, with which Respondents have fully complied. Petitioner is an applicant for admission and is thus properly detained pursuant to § 1225(b). As such, she has no rights of any kind under § 1226, including the optional grant of bond pursuant to § 1226(a)(2)(A) which she seeks. Moreover, bond is not available under § 1225. *See Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

Here, Petitioner challenges detention that is mandatory under the INA. As discussed *supra*, her prior parole did not alter her status as an applicant for admission, let alone imbue her with a vested right to remain undetained, and ICE acted within its authority to detain her. Thus, Petitioner has failed to state a claim for a violation of 8 U.S.C. § 1226(a).

CONCLUSION

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

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