UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Yurbelis SANGRONIS WANDET,
Jesus SANDOVAL SEQUERA,

Petitioners,

v.

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement, *et al.*,

Respondents.

25 Civ. 9011 (AKH)

RESPONDENTS' MEMORANDUM OF LAW IN RESPONSE TO ORDERS TO SHOW CAUSE AND IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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Respondents (the "Government") respectfully submit this memorandum of law in response to Orders to Show Cause entered by this Court on November 6, 2025 (ECF No. 7), and November 16, 2025 (ECF No. 16), and in opposition to the amended petition for writ of habeas corpus ("Petition" or "Pet.") filed by petitioners Yurbelis Sangronis Wandet ("Petitioner Sangronis Wandet") and Jesus Sandoval Sequera ("Petitioner") on November 11, 2025 (ECF No. 14).[1]

PRELIMINARY STATEMENT

The petitioners are natives and citizens of Venezuela who entered the United States shortly before October 15, 2023, when Border Patrol with U.S. Customs and Border Protection ("CBP") encountered them at or near Eagle Pass, Texas. *See* Declaration of Supervisory Detention and Deportation Officer Christopher Finnie, dated November 14, 2025 ("ICE Decl.") ¶ 4; Pet. ¶ 1. Both were released on their own recognizance on conditional parole due to lack of bed space. ICE Decl. ¶ 4. Petitioners have no legal authorization to remain in the United States and are currently in removal proceedings. ICE Decl. ¶ 5. Following the failure of Petitioner Sandoval Sequera to comply with an ICE biometrics check-in on September 2, 2024, and his arrest by the New York Police Department ("NYPD") on July 7, 2025, ICE revoked his order of release on recognizance on October 30, 2025. ICE Decl. ¶¶ 6-7, 10, 12. Since that date, he has been in ICE custody. ICE Decl. ¶¶ 14-17. Petitioner Sangronis Wandet was enrolled in the ATD program and fitted with a GPS ankle monitor. ICE Decl. ¶¶ 13.

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[1] Petitioner Sangronis Wandet is not in custody, but ICE required her to wear a GPS ankle monitor, a far less restrictive limitation upon her liberty. (Pet. ¶ 2.) Accordingly, her claims are addressed at the end of each section, and the primary focus of this brief is Jesus Sandoval Sequera, who is currently in ICE physical custody. (Pet. ¶ 2.)

Petitioner contends that his detention violates the INA (Pet. ¶¶ 34-40, 67-70), the Due Process Clause of the Fifth Amendment (Pet. ¶¶ 41-46, 47-60), the Fourth Amendment (Pet. ¶¶ 61-66), and the Administrative Procedure Act ("APA") (Pet. ¶¶ 71-74). Petitioner Sandoval Sequera further alleges that he is entitled to immediate release (Pet. ¶¶ 74-79).

The Petition should be denied. By statute, Petitioner is deemed an applicant for admission who is subject to removal. As such, he is being detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is subject to mandatory detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). To the extent the Court were to disagree and hold that Petitioner is being detained under 8 U.S.C. § 1226(a), he would then be entitled to a bond hearing before an immigration judge, if he requests one. In that event, the Court should require Petitioner to exhaust this administrative remedy before entertaining his challenge to his detention through a habeas petition. Petitioner's claims under the Fifth and Fourth Amendments and the APA also lack merit.

Finally, Petitioner should not be released pending the adjudication of these proceedings because there are no extraordinary circumstances warranting release, and immediate release is not necessary to make the habeas remedy effective. Nor are there extraordinary circumstances arising from requiring Petitioner Sangronis Wandet to wear a GPS ankle monitor.

BACKGROUND

Petitioners are natives and citizens of Venezuela. ICE Decl. ¶ 3. On or about October 15, 2023, CBP encountered petitioners at or near Eagle Pass, Texas, and determined that they had unlawfully entered the United States without inspection, admission, or parole by an immigration officer on October 13, 2023. After processing, the petitioners were released the same day on their own recognizance on conditional parole pursuant to 8 U.S.C. § 1226(a)(2)(B) due to lack of bed

space, and personally served with Forms I-220A, Order of Release on Recognizance, as well as Forms I-286, Notice of Custody Determination. ICE Decl. ¶ 4. On October 15, 2023, CBP personally served the petitioners with Notices to Appear ("NTA"), charging them as inadmissible under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as aliens present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. On the same date, the NTAs were served on the Executive Office for Immigration Review, New York – Federal Plaza Immigration Court ("New York Immigration Court") in New York, New York, thereby commencing removal proceedings against the petitioners. ICE Decl. ¶ 5.

Prior to his release in October 2023, Petitioner was enrolled in the Alternatives to Detention ("ATD") program and processed for SmartLink. Petitioner was given instructions to report to the nearest ICE Office on December 13, 2023. ICE Decl. ¶ 4. On March 20, 2024, Petitioner reported to the Queens, New York biometric office for tracking by the New York ICE Office and was given the conditions of office visits every twelve weeks. ICE Decl. ¶ 6. On September 2, 2024, however, Petitioner missed a biometrics check-in in violation of the ATD program. Biometric contractors notified ICE on September 4, 2024, of the missed check-in, and ICE made numerous efforts to contact Petitioner by phone, including by trying to reach Petitioner Sangronis Wandet. Petitioner failed to log in as he was required to do as a condition of his release. ICE Decl. ¶ 7.

Instead, on September 23, 2024, Petitioner filed with the Immigration Court an application for relief for himself and his family, Petitioner Sangronis Wandet and a minor child. ICE Decl. ¶ 8. On December 26, 2024, the petitioners appeared *pro se* for their first master calendar hearing

before an Immigration Judge at the New York Immigration Court. The case was adjourned at the petitioners' request to allow time for them to find an attorney. ICE Decl. ¶ 9.

On July 7, 2025, Petitioner was arrested by the NYPD for Unauthorized Use of a Vehicle in the Second Degree, in violation of New York Penal Law ("NYPL") § 165.06, Grand Larceny in the Fourth Degree, to wit where the value of property exceeds one hundred dollars and the property consists of a motor vehicle, in violation of NYPL § 155.30(08), Reckless Endangerment in the Second Degree, in violation of NYPL § 120.20, Criminal Possession of Stolen Property in the Fourth Degree, in violation of NYPL § 165.40, and aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, in violation of Vehicle and Traffic § 0511. The charges were subsequently dismissed. ICE Decl. ¶ 10. The Petition presents a sympathetic picture of the circumstances surrounding the arrest, contending that Petitioner was unaware that he was in possession of a motor scooter that had been stolen. Pet. ¶¶ 17-19. The Government takes no position on the accuracy of this explanation, but notes that under the Laken Riley Act, an inadmissible individual who is "charged with, arrested for, convicted of, admit having committed, or admit committing acts which constitute the essential elements of any burglary, theft, larceny, or shoplifting offense" is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E)(ii).

On October 30, 2025, the petitioners appeared pro se for their second master calendar hearing before an Immigration Judge at the New York Immigration Court. The allegations and the charge in their respective NTAs were sustained and the case was rescheduled to allow the petitioners time to find an attorney. ICE Decl. ¶ 10. Immediately following the master calendar hearing, ICE revoked Petitioner's order of release on recognizance and took him into custody at 26 Federal Plaza, New York, pursuant to INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A),

alternatively pursuant to INA § 236(c), 8 U.S.C. § 1226(c) based on his criminal history. During processing, ICE served Petitioner with a Form I-200, Warrant for Arrest. ICE Decl. ¶ 12. Meanwhile, Petitioner Sangronis Wandet was enrolled in the ATD program and fitted with a GPS ankle monitor. She was given the condition of in-office reports every eight weeks. ICE Decl. ¶ 13.

As the Government previously advised the Court (ECF Nos. 12, 13), ICE inadvertently and temporarily violated the temporary restraining order issued by the Court by moving Petitioner to ICE's Imperial Region Detention Facility near San Diego, California. ICE promptly rectified that error and Petitioner is now being held at Orange County Jail pursuant to 8 U.S.C. § 1225(b)(2)(A), alternatively pursuant to 8 U.S.C. § 1226(c), pending removal proceedings. ICE Decl. ¶¶ 14-17.

ARGUMENT

I. PETITIONER'S CHALLENGES TO HIS DETENTION FAIL

Petitioner contends that his detention violates the INA (Pet. ¶¶ 34-40, 67-70), the Due Process Clause of the Fifth Amendment (Pet. ¶¶ 41-46, 47-60), the Fourth Amendment (Pet. ¶¶ 61-66), and the Administrative Procedure Act (Pet. ¶¶ 71-74). Petitioner Sandoval Sequera further alleges that he is entitled to immediate release (Pet. ¶¶ 74-79). For the reasons set forth below, these claims lack merit.

A. Petitioner's Detention Is Governed by 8 U.S.C. § 1225(b)(2)(A)

Petitioner's assertion that his detention is governed by 8 U.S.C. § 1226(a), Pet. ¶ 35, is mistaken. Petitioner illegally entered the United States and is statutorily deemed an applicant for admission whose detention is instead governed by 8 U.S.C. § 1225(b).

In the INA, 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 generally* 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) (citation omitted).

Prior to 1996, the INA treated aliens differently based on whether the alien had *physically* "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Judulang v. Holder*, 565 U.S. 42, 45–46 (2011) ("Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an 'exclusion proceeding' and an alien already here channeled to a 'deportation proceeding.'") (citing *Landon v. Plasencia*, 459 U.S. 21, 25–26 (1982)). "Entry" referred to "any coming of an alien into the

United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2011).

An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Judulang*, 565 U.S. at 45. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had

> the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," *including the right to request release on bond*, while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings'" and were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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").

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). IIRIRA replaced the focus on physical "entry" with a focus on lawful "admission." IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

Post-IIRIRA, pursuant to Section 1225, an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3). The term "admission" is defined by the INA to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Applicants for admission fall under two categories, *i.e.*, those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). *See Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2) is broader and applies to any applicant for admission who an immigration

officer determines to be "not clearly and beyond a doubt entitled to be admitted" to the United States (with limited exceptions). *See id.* § 1225(b)(2)(A); *Jennings*, 583 U.S. at 287 (noting that 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)"). Under Section 1225(b)(2), if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, detention is mandatory: the statute provides that he or she "*shall be detained* for a proceeding under section 1229a."[2] *Id.* § 1225(b)(2)(A) (emphasis added).[3]

In the present case, Petitioner falls within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. First, by statute Petitioner is an "applicant for admission" to the United States because he is "[a]n alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). Second, Petitioner is "seeking admission" into this country. *Id.* Moreover, because Petitioner 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 he is present in the United States without being admitted" because, as charged in his removal proceedings, he is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other

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[2] Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings to which the Petitioner is currently subject before the Immigration Court.

[3] That detention authority has long been recognized as a permissible means of ensuring the security of the border and controlling entry into the United States. Indeed, the Supreme Court has rejected a due process challenge to arriving aliens' detention at the border, explaining that "an alien on the threshold of initial entry stands on a different footing" than an alien within the United States, which justifies detention at the border. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

than as designated by the Attorney General. Accordingly, Petitioner's detention is pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

Moreover, Petitioner is an applicant for admission, notwithstanding his presence in the United States. "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission,' § 1225(a)(1) . . . ." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *see also* 8 U.S.C. § 1225(a)(1) (deeming "[a]n alien present in the United States who has not been admitted or who arrives in the United States" as an "applicant for admission"). Applicants for admission, such as Petitioner, are "treated, for constitutional purposes, as if stopped at the border." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal quotation marks omitted).

Petitioner, along with Petitioner Sangronis Wandet and their child, unlawfully entered the United States with their daughter in October 2023, and have therefore resided within this country for two years. Pet. ¶ 14. However, Petitioner's unauthorized physical entrance into the country did not constitute an "admission" into the country. Furthermore, as intended by Congress when it enacted IIRIRA, Section 1225 applies to non-citizens who are found unlawfully present in the United States. Section 1225(b)(1) is titled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled" and Section 1225(b)(2) is titled "Inspection of Other aliens." Section 1225 thus applies to more than just non-citizens who are stopped at the border prior to making an entry. It also applies where, as here, ICE agents first encounter and arrest the non-citizen after he entered the country illegally. Thus, Petitioner is an

applicant for admission who is seeking admission, and his detention is pursuant to Section 1225(b)(2)(A).[4]

This reasoning comports with the Supreme Court's decision in *Jennings v. Rodriguez*, which explains that 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) (with specific exceptions not relevant here)," 583 U.S. at 287, and mandates detention, *id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court 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.").

The same analysis applies to Petitioner Sangronis Wandet, who entered the United States along with Petitioner at the same time, and was also released on her own recognizance. As the Petition notes, she is not currently detained. *See* Pet. ¶¶ 5, 22.

Courts in this district have not agreed with the BIA's interpretation, generally following *Lopez Benitez v. Francis*, 25-cv-5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025), which predated the BIA's recent decision in *Matter of Hurtado*. In *Lopez Benitez*, the court

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[4] Reading 8 U.S.C. § 1225(b)(2) to mandate detention for any "applicant for admission" is in accordance with the plain meaning of the text. *See Vargas Lopez v. Trump*, No. 25 Civ. 526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (denying habeas petition and holding that petitioner was "an alien within the 'catchall' scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a"). This reading does not render Section 1226 superfluous. Section 1226 continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See Chavez v. Noem*, No. 25 Civ. 02325 (CAB) (SBC), 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (discussing interplay between sections 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to section 1226(a)).

reasoned that mandatory detention under § 1225 and discretionary detention under § 1226 are mutually exclusive especially where, as here, the initial release by CBP was under § 1226, and that initial release, which in this case occurred in October 2023, is therefore binding on the agency. Once the alien falls within the scope of § 1226, *Lopez Benitez* reasons, petitioners have viable due process claims where the agency has not made an "individualized determination" of factors such as dangerousness or flight risk. *See id.* at *10; *see also Romero Perez v. Francis*, 25-cv-8112 (JGK), 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) ("Reading § 1225(b)(2)(A) to cover detention of all 'applicants for admission,' regardless of whether they are seeking admission, would render the phrase 'seeking admission' surplusage and disregard the statute's present-tense requirement, that is, the requirement that the applicant for admission is 'seeking admission.'") (emphasis in original); *Tumba Huamani v. Francis*, 25-cv-8110 (LJL), 2025 WL 3079014, at *5 (S.D.N.Y. Nov. 4, 2025) ("Thus, a noncitizen who has entered the country, even illegally, and is apprehended by CBP after entry is not subject to the mandatory detention provision of Section 1225, and is instead subject to the discretionary detention provision of Section 1226."); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626, at *4 (S.D.N.Y. Oct. 19, 2025) ("The Court holds that Gonzalez is "not subject to mandatory detention as a noncitizen 'seeking admission' to the country under 8 U.S.C. § 1225, but rather may be subject to detention only on a discretionary basis under § 1226.")[5] (quoting *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19,

[5] Although this court believed that the Government did not dispute that Gonzalez was "released on his own recognizance pursuant to 8 U.S.C. § 1226," 2025 WL 2961626, at *4, that is not entirely correct. The Government acknowledged that the petitioner was released on recognizance but did not concede that Section 1226 applied to his detention; in fact, the Government maintained that "his status as an applicant for admission has remained unchanged." Gov't Br., No. 25 Civ. 8250 (AT), ECF No. 18, at 8.

2025)). The Government respectfully disagrees with these cases and notes that Your Honor has not yet ruled upon this issue.

B. Petitioner's Due Process Rights Have Not Been Violated

For similar reasons, Petitioner's claim that his due process rights have been violated is mistaken. *See* Pet. ¶¶ 41–46. First, with respect to his procedural due process rights, the Supreme Court has instructed that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*, 345 U.S. at 212 (citing *Knauff*, 338 U.S. 544); *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 process protections of the Fifth Amendment"). Indeed, as a court in this district recognized in a case decided after *Jennings*, involving an applicant for admission, "because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018); *see also Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (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); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (same applying *Mezei* and *Thuraissigiam*); *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413, at *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.").

Moreover, more than a century of Supreme Court precedent confirms that applicants for admission are treated differently under the law for due process purposes from other categories of detained aliens. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has

effected an entry into the United States and one who has never entered runs throughout immigration law."). In the relevant provisions of the INA, Congress has decided to treat applicants for admission differently and detain them during ongoing proceedings to more easily effectuate their exclusion from the United States if necessary (and post-IIRIRA, this includes those found in the interior who are present without having been admitted). Unlike admitted aliens later placed in removal proceedings and detained under section 1226, applicants for admission are "request[ing] a privilege," *Landon*, 459 U.S. at 32, and therefore "stand[ ] on a different footing," *Mezei*, 345 U.S. at 212-13. Their lack of entitlement to a bond hearing thus flows from their lack of admission to the United States in the first instance. Given that the constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide, Petitioner cannot show that he has suffered a procedural due process violation.

Petitioner's detention for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights, contrary to the arguments in the Petition. (*See* Pet. ¶¶ 41-46, 55-60.) For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848; *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be [in]

vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."). Accordingly, Petitioner's due process claims should be denied.

For the same reasons, Petitioner Sangronis Wandet lacks a viable due process claim. As a result of the process afforded to her, she was promptly released on conditions and not detained. Relief from bond and conditions presents a far less weighty private interest than detention, and Petitioner Sangronis Wandet already had adequate process when the agency granted release on those terms after evaluating what would be necessary to ensure her appearance at future immigration hearings. Although she understandably complains about the discomfort of the ankle monitor, there is no allegation that she has provided ICE with information about any medical condition in support of a request to remove the ankle monitor.[6]

As above, the Government notes that other courts in this district have recently concluded that aliens already present in the United States at the time of detention by ICE are subject to

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[6] Petitioner Sangronis Wandet's citation to *Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516 (D. Mass. June 11, 2025), is unavailing. Pet. ¶ 50. In that case, ICE conceded that the petitioner's detention was in "error" because the petitioner had been granted humanitarian parole into the United States, which was still "valid and in effect" at the time of his arrest. *Id.* at *7–*8. By contrast, Petitioner here had no valid status in the United States, and ICE had already revoked his release and issued a warrant for his arrest. Similarly, Petitioner's reference to the removal of GPS monitoring and intensive supervision in *Orellana Juarez v. Moniz*, __ F. Supp. 3d. __, 2025 WL 1698600, at *5 (D. Mass. 2025), is inapposite. Pet. ¶ 50. In that matter, the petitioner had already been released pursuant to an immigration judge's order setting bond and conditions of release, and the government imposed additional conditions that deviated from the immigration judge's bond hearing determination.

discretionary detention under § 1226, and thus a failure to provide an individualized determination amounts to a due process violation. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *9-13. As before, the Government respectfully disagrees with these cases and notes that Your Honor has not yet ruled upon this issue. The Government also notes that in this case, both Petitioner and Petitioner Sangronis Wandet failed to cooperate with ICE mandatory check-ins, raising the risk of flight. ICE Decl. ¶¶ 6-7. It was not unreasonable for the agency to be concerned that Petitioner might have been trying to evade ICE's authority.

C. Petitioner's Detention Does Not Violate the Administrative Procedure Act

Petitioner's APA claim (Pet. ¶¶ 71-74), is without merit. He asserts that the decision to detain him was arbitrary and capricious and contrary to law under the APA. But the APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. The Supreme Court has made clear that where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *see also id.* at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here."). Moreover, Petitioner cannot show that there is anything arbitrary or capricious or unlawful about his detention when his detention is mandated by statute, and, separately, where he violated his prior conditions of release and was arrested on criminal charges. *See Chen v. Rollins*, 23 CV 1440 (VEC), 2025 WL 2476930, at *6 (S.D.N.Y. Aug. 28, 2025) ("APA instructs courts to 'hold unlawful and set aside agency action" that is "not in accordance with law.") (quoting 5 U.S.C. § 706(2)(A)). For these reasons and those stated herein, Petitioner's APA claim fails.

II. PETITIONER'S ARREST DOES NOT VIOLATE THE FOURTH AMENDMENT

Petitioner's Fourth Amendment claim should also be rejected. (*See* Pet. ¶¶ 61-66.) First, the Fourth Amendment has no applicability in the context of an immigration arrest. *See Abel*, 362 U.S. at 232–37 (discussing longstanding administrative arrest procedures in deportation cases). Instead, there is "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens such as petitioner." *Abel*, 362 U.S. at 233; *cf. Gerstein v. Pugh*, 420 U.S. 103, 127 n. 27 (1973) (noting that "the Fourth Amendment was tailored explicitly for the criminal justice system," and that its "probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of *criminal conduct*" (emphasis added)). In any event, here ICE arrested Petitioner after he failed to check in with the agency as he (and his spouse) were obliged to do, and after he was arrested by the New York Police Department on July 7, 2025, for Unauthorized Use of a Vehicle in the Second Degree, in violation of New York Penal Law ("NYPL") § 165.06, Grand Larceny in the Fourth Degree, to wit where the value of property exceeds one hundred dollars and the property consists of a motor vehicle, in violation of NYPL § 155.30(08), Reckless Endangerment in the Second Degree, in violation of NYPL § 120.20, Criminal Possession of Stolen Property in the Fourth Degree, in violation of NYPL § 165.40, and aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, in violation of Vehicle and Traffic § 0511. While the criminal charges were subsequently dismissed, that arrest coupled with the missed check-in provided probable cause for ICE to arrest and detain him pending his removal proceedings.

III. TO THE EXTENT THE COURT DETERMINES SECTION 1226(a) GOVERNS, PETITIONER MAY CHALLENGE HIS DETENTION VIA A BOND HEARING

A. Background Regarding Section 1226

Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and the Department of Homeland Security ("DHS") have broad discretion to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings);[7] *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for anyone's arrest or release under § 1226 — and it gives the Secretary broad discretion as to both actions"). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (2020)). If DHS decides to release the alien, it may set a

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[7] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority — delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d) — to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities [s]he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).[8] Even after DHS decides to release an alien, it may "at any time" revoke such release, "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a post-deprivation custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien based on a variety of factors that account for the alien's ties to the United States and whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does the Constitution. *See Velasco Lopez*, 978 F.3d at 848. Furthermore, the Board of Immigration Appeals ("BIA") — whose decisions are binding on immigration judges — has placed the burden of proof on the alien, who "must establish to the satisfaction of the Immigration Judge . . . that he

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[8] In addition to bond, the government may release an alien detained under section 1226(a) on his own recognizance, which is a form of conditional parole. *See* 8 U.S.C. § 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS['s] conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]"); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964).[9] If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

B. Petitioner Should Be Required to Seek Release Before An Immigration Judge Rather Than Ordered Immediately Released

If the Court nevertheless determines that Petitioner's current detention is pursuant to Section 1226(a), then Petitioner would be entitled to a bond hearing in immigration court where he could challenge his detention through that administrative process. *See Guzman v. Joyce*, No. 25 Civ. 4777 (RA), 2025 WL 1696891, at *2–*3 (S.D.N.Y. June 17, 2025). In that event, the Court should direct that Petitioner be provided a bond hearing with an immigration judge, where the immigration judge will consider whether Petitioner poses a danger to the community or a flight risk. This is particularly appropriate given Petitioner's failure to comply with his release terms and interactions with the criminal justice system while he was previously released by DHS.

And as for Petitioner Sangronis Wandet, who is not detained and challenges only the requirement that she have to wear a GPS ankle monitor, she should be required to exhaust her

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[9] The Second Circuit has not issued a generally applicable rule with respect to the allocation and quantum of the burden of proof at initial section 1226(a) immigration court bond hearings. Rather, the Second Circuit held only that when an alien demonstrates that his detention has become unreasonably prolonged in violation of due process, the alien is entitled to receive a new bond hearing at which DHS bears the burden of demonstrating by clear and convincing evidence that the alien is either a danger to the community or a flight risk. *See Velasco Lopez*, 978 F.3d at 855.

administrative remedies before the appropriate agency to seek amelioration of that condition of her release. *See, e.g.*, *Castillo Lachapel v. Joyce*, No. 25 Civ. 4693 (JHR), 2025 WL 1685576, at *3-*4 (S.D.N.Y. June 16, 2025) (non-citizens detained under Section 1226(a) should be required to exhaust administrative remedies before resorting to habeas petition); *Guzman*, 2025 WL 1696891, at *2-*3 (same).

IV. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION OF HIS HABEAS PETITION

Petitioner's request that for his immediate and unconditional release from detention should be denied. (*See* Pet. ¶¶ 75-79.) Under the governing law, such release is warranted only when a petitioner: (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001). This standard is "a difficult one to meet," and Petitioner bears the burden to make the necessary showings. *Id.* at 226. No such claims or circumstances are raised here, and immediate release is not necessary to make the habeas remedy effective.

First, for the reasons already discussed, the Government submits that Petitioner has not raised substantial claims. His detention is mandatory pursuant to 8 U.S.C. § 1225(b).

Second, Petitioner has not shown extraordinary circumstances. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,[10] 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 near

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[10] In *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007), for example, the court did not find extraordinary circumstances because the plaintiff offered no reason "other than convenience, why his continued detention by the INS would affect th[e] Court's ultimate consideration of the legal issues presented in his petition for review."

completion that extraordinary action is essential to make collateral review truly effective. *See, e.g.*, *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances "seem to be limited to situations involving poor health or the impending completion of the prisoner's sentence").[11] None of these circumstances are present here.

Third, interim release is not necessary to make the habeas remedy effective in this case. Indeed, Petitioner has not articulated any reason why his interim release is "necessary to make the habeas remedy effective." And in *Mapp* itself, the Second Circuit reversed because the "district court neglected to articulate why its grant of bail was 'necessary to make the habeas remedy effective.'" *Id.* at 226, 230. Here, while this habeas case is pending and Petitioner remains detained, he can continue to pursue immigration relief in his removal proceedings. While Petitioner and his family are undoubtedly affected by his detention, those effects do not require immediate release to make the remedy effective. And if the Court were to grant release on the merits of the habeas petition, there would be no reason to grant interim relief under *Mapp*. *Cf. Reid v. Decker*,

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[11] In *Vasquez Salgado v. Francis*, No. 25 Civ. 6524 (VEC), 2025 WL 2806757, at *6 (S.D.N.Y. Oct. 1, 2025), the district court found extraordinary circumstances where, among other things, the petitioner suffered "severe mental health issues." *See also id.* at *8 n.13 (noting the specific "confluence of facts presented" in that matter and that not "all mentally ill ICE detainees or all transgender ICE detainees are entitled to release while their habeas claims are pending").

No. 19 Civ. 8393 (KPF), 2020 WL 996604, at *13 (S.D.N.Y. Mar. 2, 2020) ("The Court is truly sympathetic to Reid's situation. However, particularly in light of the fact that the Court is granting the relief sought in Reid's Petition, Reid has not established the existence of extraordinary circumstances that make the grant of bail necessary to make the habeas remedy effective.").

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus.

Dated: New York, New York
November 14, 2025

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 7294 words.