UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAWNET NICKESHA MCDONALD,

Petitioner,

v.

LADEON FRANCIS, In His Official Capacity as Acting Director of the New York City Field Office of Immigration and Customs Enforcement, *et al.*,

Respondents.

No. 25 Civ. 9355 (JAV)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS**

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Respondents (the "Government") respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 18 (the "Petition" or "Pet."), filed on behalf of petitioner Shawnet Nickesha McDonald ("Petitioner").

## PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Jamaica who was apprehended by U.S. Customs and Border Protection ("CBP") in January 2023 near San Ysidro, California, after she unlawfully entered the United States. Because Petitioner is an alien who illegally entered the United States without inspection or admission and who was deemed inadmissible at that time, the U.S. Department of Homeland Security ("DHS") had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a or issue an expedited removal order. DHS opted to place Petitioner in section 1229a removal proceedings and release her in the interim on her own recognizance. On November 7, 2025, U.S. Immigration and Customs Enforcement ("ICE") took Petitioner into custody. Petitioner was detained at a temporary holding facility located at 26 Federal Plaza, New York, New York, until November 9, 2025, at which point she was transferred to South Louisiana ICE Processing Center in Basile, Louisiana.

Petitioner asserts that her detention violates her Fifth Amendment rights to substantive and procedural due process, the Immigration and Nationality Act ("INA"), and the Administrative Procedure Act ("APA").

The Petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, under precedent from the Board of Immigration Appeals, Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A) and thus subject to mandatory detention and potential release only on discretionary parole by DHS. If the Court determines Petitioner's detention is instead governed by 8 U.S.C. § 1226(a), as Petitioner asserts, Petitioner would then be entitled to a bond hearing before an immigration judge, which would afford her sufficient process to contest her detention. At a

bond hearing, an immigration judge would assess whether Petitioner presents a danger to the community or a flight risk, and at which Petitioner's criminal history would be considered. Accordingly, the Court should deny the Petition.

## LEGAL BACKGROUND

### I. Detention Authority Under the INA

For more than a century, the immigration laws have authorized immigration officials to arrest aliens subject to removal and detain them during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233-34 (1960). In the INA, Congress has 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) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

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 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 the Illegal Immigration Reform and Immigrant Responsibility Act ("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. 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 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." 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." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and it provides for "expedited removal proceedings" in certain circumstances. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). Section 1225(b)(2)(A) provides for the inspection of all "other" applicants for admission, and it 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 [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to temporarily release an applicant for admission "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings v. Rodriguez*, 583 U.S.

281, 288 (2018) (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole . . . been served," the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

In contrast, aliens who are not applicants for admission may (but need not) be detained at the Government's discretion. Pursuant to 8 U.S.C. § 1226(a), "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). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings.[1] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings). Under Section 1226(a)(1), "[t]o 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); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

**FACTUAL BACKGROUND**

Petitioner is a citizen of Jamaica. *See* Declaration of Supervisory Detention and Deportation Officer Lige Hampton ("Hampton Decl.") ¶ 3. CBP encountered Petitioner in or near San Ysidro, California on January 30, 2023, and determined that she had unlawfully entered the

[1] 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 aliens under § 1226(a) is "one of the authorities 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).

United States without inspection, admission, or parole. *Id.* ¶ 4. On January 31, 2023, CBP served Petitioner with a Notice to Appear ("NTA"), charging her with inadmissibility under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. *Id.* ¶ 5. Petitioner was released on her own recognizance on February 1, 2023. *Id.* ¶ 6.

On February 17, 2023, DHS filed the NTA with the New York Immigration Court located at 26 Federal Plaza, New York, New York, thereby commencing Petitioner's removal proceedings. *Id.* ¶ 7. Petitioner initially had a master calendar hearing scheduled for May 22, 2023. *Id.* However, the Immigration Court vacated Petitioner's master calendar hearing and issued a scheduling order that directed Petitioner to file written pleadings within 30 days. *Id.* ¶ 8. DHS was directed to reply, if necessary, to the written pleadings within 20 days of the Petitioner's filing. *Id.* ¶ 9. If Petitioner did not file written pleadings before the deadline, DHS could seek an order for removal for Petitioner' failure to prosecute her claim. *Id.* Petitioner did not file a response within the 30 days of the Immigration Court's order. *Id.* ¶ 10. DHS did not seek an order for Petitioner's removal at that time. *Id.*

On September 16, 2023, Petitioner was arrested by the New York City Police Department in Kings County, New York. *Id.* ¶ 11. She was charged with menacing in the second degree in violation of New York Penal Law ("N.Y.P.L.") § 120.14. *Id.* Several months later, on March 19, 2024, Petitioner was again arrested by the New York City Police Department in Kings County, New York. *Id.* ¶ 12. She was charged with assault in the second degree in violation of N.Y.P.L. § 120.05; two counts of assault in the third degree in violation of N.Y.P.L. § 120.00; and harassment in the second degree, in violation of N.Y.P.L. § 240.26. *Id.*

On September 19, 2024, the Immigration Court issued a Notice of In-Person Hearing for March 24, 2025, in connection with Petitioner's removal proceedings. *Id.* ¶ 13. On March 24, 2025, Petitioner appeared *pro se* at her hearing in Immigration Court. *Id.* ¶ 14. The Immigration Judge adjourned Petitioner's case until August 28, 2025. *Id.* On August 28, 2025, Petitioner appeared *pro se* for her second master calendar hearing. *Id.*¶ 15. However, the Immigration Court did not conduct her hearing because of a scheduling conflict. *Id.* The Immigration Court adjourned the hearing to November 7, 2025. *Id.*

On November 7, 2025, Petitioner appeared for her third master calendar hearing in Immigration Court at 26 Federal Plaza in Manhattan. *Id.* ¶ 16. Following the hearing, ICE took Petitioner into custody and transported her to ICE's processing space at 26 Federal Plaza pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 16. Petitioner was served with a Warrant for Arrest of Alien (Form I-200), Notice of Fee Assessment Under 8 U.S.C.§ 1815 (Form 1815), a form entitled "Important Information about Section 236(a) Initial Detention Decisions," a copy of Online Detainer Locator System Privacy Notice, and a list of pro bono legal service providers. *Id.* Petitioner was also advised of her right to consular notification. *Id.* ¶ 17. Petitioner agreed that the Jamaican consulate should be notified of her detention. *Id.*

On November 7, 2025, Petitioner, through next friend, filed a petition for a writ of habeas corpus. ECF No. 1 (the "Petition"). Petitioner remained in ICE's processing space at 26 Federal Plaza until approximately 8:37 A.M. on November 9, 2025, at which point she was transferred to South Louisiana ICE Processing Center in Basile, Louisiana.[2] Hampton Decl. ¶¶ 18-19. On

[2] In a status letter dated November 12, 2025, the Government indicated that Petitioner was transferred to River Correctional Facility in Ferriday, Louisiana on November 9, 2025. ECF No. 5. ICE has since determined Petitioner was transferred to the South Louisiana Processing Center on November 9, 2025. Hampton Decl. ¶ 19. The Government apologizes to the Court for this error.

November 10, 2025, the Court issued an Order staying Petitioner's removal pending further order from the Court. ECF No. 4. The Court also directed the Government to provide the Court with a status report by November 12, 2025. ECF No. 4. The Government did so and indicated that ICE had confirmed receipt of the Court's Order. ECF No. 5. Petitioner's removal case has since been transferred from the New York Immigration Court to the Oakdale Immigration Court in Oakdale, Louisiana. Hampton Decl. ¶ 22. Petitioner's next master calendar hearing is scheduled for December 2, 2025. *Id.*

Petitioner asserts violations of her substantive and procedural due process rights under the Fifth Amendment. Petition ¶ 22. She also asserts that her continued detention violates the INA and APA. *Id.* ¶ 24.

## ARGUMENT

### I. Petitioner Is Lawfully Detained Pursuant to Section 1225(b) and Not Entitled to a Bond Hearing

Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A), which mandates that she remain in detention during the pendency of her removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), "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 [8 U.S.C. §] 1229a."

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 she is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Second, because Petitioner has not demonstrated to an examining immigration officer that she is "clearly and beyond a doubt entitled to be admitted," her detention is mandatory.

8 U.S.C. § 1225(b)(2)(A). Petitioner cannot demonstrate that she is "clearly and beyond a doubt entitled to be admitted" because, as charged in her removal proceedings, she is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other than as designated by the Attorney General, and she is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to Section 1225(b)(2)(A), which mandates that she "shall be" detained pending removal proceedings.

This reasoning comports with Supreme Court precedent. As explained in *Jennings*, applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2)—the provision relevant here—is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. And Section 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See id.* 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.").

To the extent the Petition can be read to argue that Section 1226(a), rather than Section 1225(b), applies, and that therefore Petitioner was entitled to process before being detained, such an argument fails. *See* Petition ¶ 68.[3] After IIRIRA, "an alien who tries to enter the country

[3] While not unanimous, courts throughout the country, including in this district, have endorsed this argument. *See, e.g.*, *Guzman Cardenas v. Almodovar*, No. 25 Civ. 9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) (granting habeas petition based on conclusion that petitioner's detention

illegally is treated as an 'applicant for admission,' § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" *Thuraissigiam*, 591 U.S. at 140. Applicants for admission like 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), even if they are paroled into the United States for a limited purpose, *see 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."). And such applicants for admission are not permitted release under Section 1226.

Petitioner was detained shortly after her unlawful entry in January 2023. Thus, she "cannot be said to have 'effected an entry,'" *Thuraissigiam*, 591 U.S. at 140, and by statute she is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), treated for constitutional purposes as if stopped at the border. Though Petitioner was released on her own recognizance after his arrest, her status as an applicant for admission has remained unchanged. Petitioner's release was revoked on

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was pursuant to Section 1226(a) rather than Section 1225(b)); *Huamani v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (same); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) (same); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (same); *Lopez Benitez v. Francis*, No. 25. Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same); *Guzman Andujar v. Ladeon Francis*, No. 25 Civ. 9199 (JLR), 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025) (same); *Comes v. DeLeon*, No. 25 Civ. 9283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) (same); *Rueda Torres v. Francis*, No. 25 Civ. 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) (same); *Ortiz-Lopez v. Francis*, 25 Civ. 7985 (KPF), ECF No. 14 (S.D.N.Y. Nov. 6, 2025) (same). DHS respectfully disagrees with those decisions, and notes that other courts have rejected the argument that Section 1226(a) applies in this context. *See Mejia Olalde v. Noem*, No. 25-cv-168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (determining that section 1225(b)(2)(A) governed); *Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (rejecting petitioner's assertion that he was detained pursuant to Section 1226(a) rather than Section 1225(b)(2)); *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)).

November 7, 2025, when ICE again arrested her. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, her detention is mandatory pursuant to Section 1225(b)(2)(A). *See Hurtado*, 29 I. & N. Dec. at 220 (alien who entered without admission or inspection are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they "have been residing in the United States for years without lawful status").[4]

Petitioner is lawfully detained pursuant to Section 1225(b)(2)(A), and thus she is not entitled to bond hearing. Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Here, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Instead, for an applicant for admission, "if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections. *See* 8 U.S.C. § 1229a. The exclusive means of release for an applicant for admission such as Petitioner is DHS's discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be

[4] BIA decisions are binding on ICE. *See* 8 C.F.R. § 1003.1(g) ("Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

granted for "urgent humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Reading Section 1225(b)(2) to mandate detention for any "applicant for admission" is in accordance with the plain meaning of the text as enacted by Congress in IIRIRA. *See Vargas Lopez*, 2025 WL 2780351, at *9 (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"); *accord Mejia Olalde v. Noem*, No. 25-cv-168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025). This reading does not render Section 1226 superfluous as that provision continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See Chavez*, 2025 WL 2730228, at *5 (observing that "[h]eeding the plain language of the statute . . . does not contradict or render superfluous § 1226, as Petitioners urge," explaining that "§ 1226 'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission'" (quoting *Jennings*, 583 U.S. at 288)). And it maintains the dichotomy prescribed by Congress in IIRIRA by distinguishing between those who effectuate a lawful entry (even if later found removable) and are subject to Section 1226, and those who illegally entered and are statutorily deemed to be applicants for admission subject to Section 1225. Petitioner's claim alleging violation of the INA, therefore fails.

## II. Petitioner's Detention Comports with Due Process

For similar reasons, Petitioner's claim that her due process rights have been violated is mistaken. Though physically present in the United States, Petitioner's status as not being "admitted" into the United States is reflected in the Supreme Court's analysis of an alien's due process rights. As Petitioner was intercepted shortly after her illegal entry in 2023, she "cannot be said to have 'effected an entry,'" *Thuraissigiam*, 591 U.S. at 140, and by statute he is deemed an

applicant for admission, 8 U.S.C. § 1225(a)(1), and was never actually "admitted" into the country within the meaning of the INA; she is thus "treated, for constitutional purposes, as if stopped at the border" under the so-called entry fiction. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Thuraissigiam*, 591 U.S. at 140 (explaining that an alien who "is detained shortly after unlawful entry" is not treated, for due process purposes, as having "effected an entry" into the United States, but is instead treated as "on the threshold," just like "an alien detained after arriving at a port of entry").

Because Petitioner is deemed an applicant for admission and thus is treated for constitutional purposes as if stopped at the border, she is lawfully detained pursuant to Section 1225(b), and neither her procedural nor substantive due process rights have been violated. First, with respect to her procedural due process rights, the Supreme Court has made clear that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*, 345 U.S. at 212 (citing *Knauff*, 338 U.S. at 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").

In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been "permanently excluded from the United States on security grounds." *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08. The Supreme Court held that Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. The Court recognized that

"once passed through our gates, even illegally," aliens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. "But an alien on the threshold of initial entry stands on a different footing." *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* (quoting *Knauff*, 338 U.S. at 544).

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). Another court in this district has held the same. *See 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). Other judges have agreed. *See, e.g.*, *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20 Civ. 159 (WLS) (MSH), 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) ("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."); *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.").

Furthermore, 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 by detaining them during ongoing proceedings to effectuate their exclusion from the United States while considering whether to admit them. 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. Their lack of entitlement to a bond hearing thus flows logically 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 she has suffered a procedural due process violation.

Petitioner's detention for the time-limited pendency of her removal proceedings also does not run afoul of his substantive due process rights. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings"); *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.").

Because Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of her removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A), *see Jennings*, 583 U.S. at 298-301, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212. To the extent Petitioner argues that her detention under Section 1225 violates her due process rights because DHS released her on conditional parole under Section 1226, that argument fails because of the intervening BIA decision in *Matter of Hurtado*—a decision binding on ICE that was issued only recently, well after Petitioner's initial arrest. It is settled that agencies may change their interpretations of statutes, provided that they offer a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "is not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation and "'[a]n administrative agency is not disqualified from changing its mind'"). *Matter of Hurtado* provides a detailed analysis of the INA's statutory framework and explains why Petitioner's detention is governed by Section 1225(b)(2)(A).

The Government is aware that another judge in this district has held that aliens subject to mandatory detention under Section 1225(b) have a constitutional right to a bond hearing under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). *See Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). The Government respectfully disagrees with that decision, and believes the decision in *Poonjani* and *Mendez Ramirez*, *see supra*, represent correct readings of the law. Further, *Black* involved aliens detained under Section 1226(c), rather than Section 1225(b), and regardless, the petitioner in *Al-Thuraya* had been detained for significantly longer than Petitioner in this case. The Government respectfully submits that the Court should not

apply that reasoning here. *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (quoting 18 Moore's Federal Practice § 134.02[1] [d] (3d ed. 2011)). As explained above, individuals detained under Section 1225(b)—as opposed to those detained under Section 1226—are treated as stopped at the border, and the Supreme Court has held that Congress defines the amount of process that is "due" for such persons. In *Al-Thuraya*, the Court concluded that this concept, known as the "entry fiction," is "inapplicable in the context of [the petitioner's] request for a bond hearing" and instead applies to "the political branches' authority to legally admit or exclude noncitizens." *Al-Thuraya*, 2025 WL 2858422, at *4. But in *Mezei*, the Supreme Court upheld the Attorney General's detention without a hearing and reversed the district court's order that he be released on bond. 345 U.S. at 207-08. It was in this context that the Supreme Court explained that "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Mezei*, 345 U.S. at 212. The entry fiction is not limited to "the political branches' authority to legally admit or exclude noncitizens," *Al-Thuraya*, 2025 WL 2858422, at *4, but instead "runs throughout immigration law." *Zadvydas*, 533 U.S. at 693 (discussing *Mezei* and noting that the "indefinite detention" of the petitioner on Ellis Island "did not count as entry into the United States" and instead he was "'treated,' for constitutional purposes, 'as if stopped at the border'"). The Government respectfully submits that *Al-Thuraya* did not fully account for this fact.[5]

[5] Additionally, at least one judge in this district addressing a similarly situated petitioner has determined that, even if Section 1225 governs, the petitioner's due process rights were violated. *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025). DHS submits that the matter was wrongly decided and respectfully disagrees with the court's decision.

Petitioner's due process claim, ¶¶ 51-64 (Count One), should therefore be denied.

## III. Should the Court Determine That Petitioner Is Detained Pursuant to Section 1226(a), Petitioner May Challenge Her Detention Through a Bond Hearing

If this Court nevertheless determines that Petitioner's current detention is governed by Section 1226(a), the Petitioner would be entitled to receive a bond hearing in immigration court for a determination whether she presents a danger to the community or a flight risk. In that event, Petitioner should be required to exhaust her challenges to her detention in immigration court before this Court orders outright release. *See, e.g.*, *Perez v. Francis*, No. 25 Civ. 8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (in similar case, holding that "the petitioner should first exhaust his remedies through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition"); *see also Sun v. Almodovar*, No. 25-cv-9262 (PKC), ECF No. 14 at 6 (Opinion & Order) (S.D.N.Y. Nov. 20, 2025) (ordering a bond hearing be held: "Because petitioner Enbin Sun is being detained pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a)").

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). The Attorney General and DHS thus have broad discretionary authority 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); *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." *Guzman Chavez*, 594 U.S. at 527 (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).[6] If 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).

An alien detained pursuant to Section 1226(a) 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 and a determination 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].").

Thus, to the extent the Court determines that Petitioner's current detention does not fall within the scope of Section 1225, the Government nevertheless has authority to detain Petitioner pursuant to Section 1226(a), and Petitioner may then request a bond hearing for a determination as to whether she presents a danger to others or a risk of flight.[7] *See* 8 C.F.R. § 1003.19. Such

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[6] In addition to bond, the Government may release an alien detainee on her own recognizance under Section 1226(a)(2)(B), which is a form of conditional parole. *See 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).

[7] To be clear, in light of *Matter of Hurtado*, a ruling from this Court that Petitioner was detained under Section 1226(a) would be required for her to then request and receive the bond hearing (alternatively, the Court's order could direct that Petitioner receive such a bond hearing).

hearing would provide constitutionally sufficient process for Petitioner's continued detention. *See Velasco Lopez*, 978 F.3d at 855.

To the extent the Court determines that Petitioner is detained pursuant to Section 1226(a), Petitioner should be required to exhaust her administrative remedies through a bond hearing before obtaining relief from a federal court. While "[t]here is no statutory requirement that a habeas petitioner exhaust [her] administrative remedies before challenging [her] immigration detention [in federal court]," *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), "district courts in this Circuit have recognized such a requirement as a prudential matter," *Castillo Lachapel v. Joyce*, 786 F.Supp.3d 860, 864 (S.D.N.Y. 2025) (internal quotation marks omitted) (requiring exhaustion for habeas petitioner detained under § 1226(a)). *See also Capunay Guzman v. Joyce*, 786 F. Supp. 3d 865, 869-71 (S.D.N.Y. 2025) (same); *Fontanelli ex rel. Bernal Garcia v. Francis*, No. 25 Civ. 7115 (JLR), 2025 WL 2773234, at *5-*8 (S.D.N.Y. Sept. 29, 2025) (same).

Where the exhaustion requirement is "judicially imposed instead of statutorily imposed," certain exceptions permit courts to excuse a party's failure to exhaust administrative remedies, including when: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (internal quotation marks omitted). However, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992). These exceptions do not apply here, where Petitioner will have access to a bond hearing if the Court determines that her detention is properly under Section 1226(a), not Section 1225. Petitioner should therefore be required to request a bond hearing before an immigration court before this Court grants her release.

## IV. Petitioner's Claim Under the APA Fails

Petitioner cannot sustain a claim under the APA because the APA is not the proper vehicle to challenge the validity of one's detention. The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and thus *must be brought in habeas*." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—and it is simply not cognizable under the APA. Petitioner's challenge to detention premised on the APA, then, must fail.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 ("[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review"); *see also J.G.G.*, 604 U.S. 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."). Here, Petitioner has identified alternative avenues for remedy via a habeas petition. Accordingly, Petitioner's APA claim should be denied.

## V. CONCLUSION

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

Dated: New York, New York
November 20, 2025

Respectfully submitted,

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**Certificate of Compliance**

Pursuant to Local Civil Rule 7.1(c) and Section III.D of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 7,165 words.