UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ZHI YE,

Petitioner,

v.

RAUL MALDONADO, WARDEN OF THE BROOKLYN METROPOLITAN DETENTION CENTER; JUDITH ALMODOVAR, ACTING DIRECTOR OF THE NEW YORK CITY FIELD OFFICE OF IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, ATTORNEY GENERAL,

Respondents.

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Civil Action No.
25-cv-6417 (AMD)

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

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PRELIMINARY STATEMENT

Respondents Warden of the Brooklyn Metropolitan Detention Center Raul Maldonado; Acting Field Office Director of the New York Office of U.S. Immigration and Customs Enforcement Judith Almodovar; Secretary of the Department of Homeland Security Kristi Noem; U.S. Department of Homeland Security ("DHS"); and Attorney General Pamela Bondi (collectively, "Respondents"), by their attorneys, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York and Michael S. Blume, Assistant United States Attorney, of counsel, respectfully submit this memorandum of law in opposition to Petitioner's Verified Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief and Order to Show Cause Regarding Writ of Habeas Corpus ("Emergency Application").

Petitioner Zhi Ye is a Chinese national who entered the United States at the Mexican border, without inspection and admission. He was encountered near Tecate, California on December 17, 2023. Because he lacked valid entry documents, and was inadmissible under, *inter alia*, 8 U.S.C. § 1182(a)(6)(A)(i), DHS opted at that time to place him into removal proceedings under 8 U.S.C. § 1229a and to issue him a Notice to Appear ("NTA") at a later date for further action. Petitioner filed an application for asylum on April 17, 2024.

On November 8, 2025, ICE agents detained Petitioner pursuant to an ICE warrant as an applicant for admission subject to mandatory detention pursuant to Section 235(b)(2)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2)(A). Petitioner is currently detained at the Metropolitan Detention Center ("MDC"). His case remains pending before an immigration judge ("IJ"). If he is unsuccessful in his claim for asylum before the IJ, he will have the opportunity for further process before the Board of Immigration Appeals ("BIA") and yet

further process if he is again unsuccessful by appealing to the Second Circuit via a Petition for Review.

On November 19, 2025, Petitioner filed this emergency petition for a writ of habeas corpus to challenge his arrest, claiming that it violated his constitutional procedural due process rights under the Fifth Amendment. He also claims relief under Section 236(a) of the INA, 8 U.S.C. § 1226(a), presumably asserting a violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-06. He seeks release from detention.

Petitioner is not entitled to the relief that he seeks in his Emergency Application. First, Petitioner's claim that Respondents violated his procedural due process is incorrect because the process owed to Petitioner is set forth by Congress, and Petitioner has not identified any process that he is owed and has not received. Specifically, Petitioner was arrested pursuant to a warrant. That arrest was authorized under the INA itself. Petitioner has not been admitted to the United States. Detention appurtenant to removal proceedings for applicants for admission – a category in which Petitioner falls – is the process that Congress authorized for such individuals under 8 U.S.C. § 1225. Second, Petitioner's APA claim is without merit, because he has other available forms of relief to challenge his detention.

RELEVANT STATUTORY AND REGULATORY FRAMEWORK

The history and structure of the INA suggest that it was the intent of Congress that aliens who entered the United States illegally, like the Petitioner here, would be subject to mandatory detention.

I. Relevant History of INA Provisions Concerning Applicants for Admission

Prior to 1996, aliens who attempted to lawfully enter the United States were in a worse

position than aliens who crossed the border unlawfully. H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). This was because the INA then provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted were subject to mandatory detention, 8 U.S.C. § 1225(a)-(b) (1995), whereas aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231 were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995). In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress, among other things, substituted the term "admission" for the term "entry" in order to ensure that aliens who entered the United States illegally were not afforded privileges unavailable to those who tried to enter legally, and were not afforded privileges that were available to those who had entered legally, but who were later deportable.

Relatedly, 8 U.S.C. § 1225(a)(1) was added to the INA as part of IIRIRA, and provides that "an alien *present* in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission" (emphasis added). This provision eliminated the prior distinction in process provided to aliens appearing at ports of entry as compared to those who were encountered after they had entered the United States, without inspection and authorization, bypassing approved ports of entry. The INA also now defines "admission" as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures). The purpose of these particular changes, as reflected in IIRIRA's legislative history, was to "ensure[] that all immigrants who have not been lawfully admitted,

regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." H.R. Rep. 104-469, pt. 1, at 225.

II. Current Structure of INA Provisions Concerning Applicants for Admission

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

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

Applicants for admission fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2) is broader and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. As relevant here, 8 U.S.C. §1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68

(BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded'") (quoting *Jennings*, 583 U.S. at 299).

Section 1225(b) contains no provision for a bond hearing, but aliens subject to § 1225(b) may be released on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. at 288. When an alien is discretionarily paroled into the United States, the parolee remains both an applicant for admission and an arriving alien. 8 USC § 1182(d)(5)(A) ("parole of such alien shall not be regarded as an admission of the alien"); *accord* 8 U.S.C. § 1101(13)(B); 8 C.F.R. § 1.2.

The next section of the same title, § 1226(a), in general applies to those individuals who, unlike applicants for admission, have already been admitted to the United States, such as those admitted through a work, tourist, student, or other type of visa, but who have overstayed that visa, or have otherwise violated the terms of that visa, or who have been found later not to have been lawfully admitted. Such persons may be detained pending removal proceedings, but § 1226(a) provides an option for release of those persons on "bond" or "conditional parole," so long as the alien does not fall within categories of aliens as set forth in § 1226(c), which include those with various types of criminal history. *Jennings*, at 287-89.

RELEVANT FACTS AND PROCEDURAL HISTORY

I. Petitioner Entered the United States Without Authorization, Was Detained Under 8 USC § 1225(b) by DHS, and Then Was Released

Petitioner is a Chinese national. Petition ¶ 8. Petitioner entered the United States on December 17, 2023, by crossing the border between Mexico and the United States at or near the town of Tecate, California. Declaration of Mincheol Sol dated December 3, 2025 ("Sol Decl."),

submitted herewith, ¶ 3. There, Customs and Border Protection ("CBP") agents encountered him. *Id.* Petitioner stated to CPB that he was a citizen and national of China without the necessary legal documents to enter, pass through, or to remain in the United States. *Id.* He stated further that he had illegally crossed the international border without being inspected by an immigration officer at a designated port of entry. *Id.*

At that time, Petitioner was issued a Form I-862 NTA, which required him to appear at a later date in immigration court. *Id.* ¶ 4. The NTA charged Petitioner with being an alien 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, pursuant to Section 212(a)(6)(A)(i) of the INA (codified as 8 U.S.C. § 1182(a)(6)(A)(i)). *Id.* CBP then released Petitioner on his own recognizance due to a lack of detention space. *Id.* ¶ 5.

II. Petitioner's Ongoing Removal Proceedings, Where He Concedes Removability

Petitioner's removal proceedings formally commenced on January 24, 2024. Sol Decl. ¶ 6. On April 17, 2024, Petitioner, through his attorney, filed an application for asylum. *Id.* ¶ 7. That same day, Petitioner's attorney filed pleadings with the immigration court in which Petitioner admitted the allegation that he is an alien present in the United States who has not been admitted or paroled, thereby conceding the facts that form the basis for his being subject to removal from the United States. *Id.*

On October 21, 2025, ICE informed Petitioner that he was required to appear in person at 26 Federal Plaza on November 8, 2025. *Id.* ¶ 8. Petitioner did so, at which time ICE took him into custody pursuant to an arrest warrant and under INA § 235(b), 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶¶ 9-10. Petitioner is now being held at the MDC. *Id.*, ¶¶ 11-14.

Petitioner appeared, by way of video and with his attorney, at an immigration court hearing on November 25, 2025. Id. ¶ 17. That hearing was adjourned and rescheduled for December 9, 2025. *Id.*

ARGUMENT

I. Petitioner Fails to State a Claim for Violation of Procedural Due Process

Petitioner's claim that his detention violates procedural due process fails because applicants for admission (such as Petitioner) have only those due process rights that Congress provided by statute. To state a claim for procedural due process, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due to the plaintiff. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). The process owed is circumstance specific. *Id.* ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."). As explained below, applicants for admission into the United States – like Petitioner – have limited process afforded by Congress. That process includes mandatory detention pending removal.

1. Applicants For Admission, Like Petitioner, Have Only Those Due Process Rights That Congress Provided By Statute

The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

The Supreme Court has explained that applicants for admission, like Petitioner, lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *Knauff*, 338 U.S. at 543.

The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). The Court explained, "[w]hen an alien arrives at a port of entry — for example, an international airport — the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. It stated further that "aliens who arrive at ports of entry — even those paroled elsewhere in the country for years pending removal — are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court was clear: "the Due Process Clause provides nothing more" than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and to seek parole from the agency. *Id.*

Courts have applied this entry fiction to aliens with sympathetic claims, including those who have "entered" the United States and who have developed significant ties to this country during that time. *See e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Mezei*, 345 U.S. at 214–215

(holding that an alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"); *see also, e.g.*, *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("In concluding that Thuraissigiam's due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d. 200, 219-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute, and concluding that alien previously released from custody but not lawfully admitted was still considered "at the threshold of initial entry" over one year later for immigration purposes such that § 1225 still applied); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (holding that petitioner paroled into the United States and continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due process amounts to whatever the procedure authorized by Congress is") (cleaned up); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20-cv-159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) (concluding that plaintiff was subject to § 1225 notwithstanding her "physical presence . . . in the United States for a lengthy period" and stating that "applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens' procedural due process rights entitle them only to the relief provided by the INA").

2. Section 1225 Mandates Petitioner's Detention Without Bond Pending The Outcome of His Removal Proceeding

Petitioner falls within the ambit of § 1225(b)(2)'s mandatory detention requirement. The INA specifies that "an alien present in the United States who has not been admitted" "shall be

deemed . . . an applicant for admission." 8 U.S.C. § 1225(a). Petitioner is thus an "applicant for admission" to the United States, because he is present in the United States without having been admitted. 8 U.S.C. § 1225(a); *Thuraissigiam*, 591 U.S. at 109 ("'[A]n alien present in the United States who has not been admitted . . . ' is deemed 'an applicant for admission.'").

As an "applicant for admission," Petitioner is subject to § 1225(b). Additionally, because Petitioner was placed in removal proceedings under § 1229a, and has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). In fact, as noted above, Petitioner has conceded the facts that form the basis of his removability. Sol Decl. ¶ 7. Thus, under the terms of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b).

Several courts have endorsed this application of the statutory text. *See Duenas Garcia v. Immigr. & Customs Enf't Dept. of Homeland Sec.*, No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *1 (M.D. Fla. Nov. 25, 2005) ("The fact that [petitioner] spent time in the United States after being released on an order of recognizance – and was eventually apprehended in the county – does not change his classification."); *Andrade v. Patterson*, No. 25-cv-01695, 2025 WL 3252707, at *5 (W.D. La. Nov. 21, 2025) ("The Court therefore concludes that § 1225(b)(2)'s plain language and the 'all applicants for admission' language of *Jennings* permits DHS to detain Petitioner under § 1225(b)(2)."); *Valencia v. Chestnut*, ___ F. Supp. 3d ___, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025) ("The suggestion that petitioner may evade the designation of 'applicant for admission' merely because he has already entered the United States elides the fact that he was never lawfully admitted..."); *Cabanas v. Bondi et al.*, No. 25-cv-04830, 2025 WL 3171331, at *4 (S.D. Tex. November 13, 2025) ("The statutory definition of applicant for

admission is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person.[] That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies."); *Ramos v. Lyons*, No. 25-cv-09785, ECF No. 8 (C.D. Cal. Nov. 12, 2025) ("[T]he statute [§ 1225] does not limit [its] applicability … to aliens who have been present in the United States for only some limited period of time, or aliens who were apprehended in the United States within a certain distance from the border. Instead, the statute applies broadly to all aliens who are 'present in the United States who ha[ve] not been admitted.'"); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (an alien remains an applicant for admission subject to detention under 1225(b)(2) if he "is present in the country but has not yet been lawfully granted admission"); *Rojas v. Olsen et al.*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (finding that petitioner who lived in the United States for seven years was properly subject to mandatory detention under Section 1225 because he was present without admission.).

This reading of the statute also is consistent with Supreme Court decisions. Nothing in either § 1225(b)(1) or § 1225(b)(2) renders an alien admitted – that is, renders him no longer an "applicant for admission" – because he has entered the United States. And the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) … mandates[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin." (emphasis added)).

Applicants for admission, including those "present" in the United States, are subject to mandatory detention during the pendency of their removal proceedings under § 1225(b)(2) and are not eligible for a bond. Thus, here, as in *Thuraissigiam*, because Petitioner is an inadmissible

applicant for admission, he "requests a privilege and has no constitutional rights regarding his application[.]" *See Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right."). Instead, Petitioner has "only those rights regarding admission that Congress has provided by statute." *See Thuraissigiam*, 591 U.S. at 140; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). The statutory framework enacted by Congress requires that Petitioner be detained.

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

A contrary reading of the INA would be inconsistent with the context and purpose of

IIRIRA – to ensure that aliens who enter the country illegally are not treated more favorably than those who seek admission through the proper channels. *See Chavez v. Noem*, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025).

3. BIA Precedent Support Respondent's Reading of the INA

Respondents' construction of the INA is supported by recent persuasive precedent from the BIA — the highest administrative body for interpreting and applying the INA.[1] Specifically, in *Matter of Yajure Hurtado*, the BIA held that the INA requires that all applicants for admission — including those who entered the United States without admission or inspection and have been residing in the country for years without lawful status — be subject to mandatory detention for the duration of their immigration proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA rejected Yajure Hurtado's argument that, because he had been residing in the interior of the United States for almost three years, he could not be considered to be "seeking admission" as that phrase is used in § 1225(b)(2)(A):

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

Id. at 228. The BIA found that, because Yajure Hurtado was subject to mandatory detention, he was "ineligible for a bond hearing." *Id.* at 225.

[1] While BIA decisions are not binding on this Court and the Court may not defer to such decisions, they can be instructive.

4. The United States Acknowledges that Numerous Courts Disagree with its Reading of the INA

The United States recognizes that Courts in this District and around the country have disagreed with the Respondents' reading of the INA, and § 1225(b)(2)(A) in particular.[2] In general, these courts have reasoned that, because aliens like the Petitioner here are present in the United States, they are no longer "seeking admission" to the country and thus are no longer subject to § 1125(b)(2)(A). The only provision that would allow their detention, this reasoning continues, would thus be § 1126.[3] For instance, in *Lopez Benitez v. Francis*, ___ F. Supp. 3d. ___, 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025), the district court reasoned that the ordinary meaning of the words "seeking" and "admission" requires the applicant to actively "be doing something" and used the following analogy: "Someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there." *Id.* at *7. This analogy, focusing on practicality, does not fully account for the manner in which Congress defined "admission" in the INA. The INA at § 1101(a)(13) defines "admission"

[2] The court in *Barco Mercado v. Francis*, No. 25-cv-06582, Dkt. No. 28 at Appendix A (S.D.N.Y. Nov. 26, 2025) identified 350 decisions that reject Respondents' reading of the INA.

[3] The court in *Bautista v. Santacruz*, ___ F. Supp. 3d. ___, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) certified a class of individuals who are raising, in part, arguments like those raised by Petitioner. The court also granted partial summary judgment in favor of the class. *See Bautista v. Santacruz*, ___ F. Supp. 3d. ___, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). The *Bautista* matter is not preclusive here. First, because Petitioner was apprehended upon arrival in the United States, he is not a member of the *Bautista* class. Second, the court in Bautista did not issue a class-wide declaratory judgment or a class-wide injunction. The court's opinion and partial grant of summary judgment does not constitute a judgment. *See, e.g.*, Fed. R. Civ. P. 54(b). Rather, the court set a January 16, 2026, status conference for further proceedings.

not merely as entry, but as the "*lawful* entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13) (emphasis added). "When a statute includes an explicit definition, we must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quotation omitted). Thus, a person who is physically present in the United States without lawful "admission," as defined in § 1101(a)(13), remains an "applicant for admission."

Respondents also respectfully submit that other district court decisions in this District imbuing significance to the distinction between the terms "seeking admission" and "applicant for admission" are similarly unpersuasive. *See, e.g.*, *Rodriquez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, ___ F. Supp. 3d. ___, 2025, WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Guerrero v. Noem*, No. 25-cv-5881, 2025 WL 3214787, at *3-6 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434, at *7-8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.).[4]

In these cases, the courts reasoned that the phrase "seeking admission" in § 1225(b) had to be distinct from the phrase "applicant for admission" in the same statute, otherwise it would be

[4] This case is unlike *Diallo v. Maldonado*, No. 25-cv-5740, 2025 WL 3158295 (E.D.N.Y. Nov. 12, 2025) (Gujarati, J.) which rejected the Government's argument that detention was mandatory under § 1225. That case did not rely on statutory interpretation but on the grounds that, for those paroled under 8 USC § 1182(d)(5), notice is required for early termination. There, petitioner had received no notice. The Government respectfully notes that the petitioner in that case, like the Petitioner here, had not been granted parole under § 1182(d)(5) and instead had been released on his own recognizance.

superfluous. *Id.* But 8 U.S.C. § 1225(a)(1) expressly states that "an alien present in the United States who has not been admitted . . . *shall be deemed for purposes of this chapter an applicant for admission*" (emphasis added). Thus, Congress itself deemed that all aliens present in the United States who have not been admitted are "applicants for admission," regardless of whether they are in fact actively "seeking admission." *See Chavez*, 2025 WL 2730228, at *4 (aliens who were present in the United States and have not been admitted are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *accord, Alonzo v. Noem*, ___ F. Supp. 3d ___, 2025 WL 3208284, at *4 (E.D. Cal. Nov. 17, 2025); *Olaide v. Noem*, No. 25-cv-0168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). In addition, 8 U.S.C. § 1225(a)(3), which requires all aliens "who are applicants for admission *or otherwise* seeking admission" to be inspected by immigration officers, making clear that "applicants for admission" are *within the set for those* "seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added).

Respondents suggest that this Court follow the reasoning of the court in *Rojas*, which rejected the reasoning of these cases. *Rojas*, 2025 WL 3033967, at *8. In *Rojas*, the petitioner, an alien and citizen of Mexico, argued, among other things, that his detention should be subject to § 1226 because he had been living in the United States for seven years (albeit without admission or authorization) at the time of his detention. *Id.* The court rejected petitioner's arguments that he was not seeking admission because he was not being detained presently at the border and found, instead, that respondents' textual argument was correct. *Id.* In holding that Rojas was subject to § 1225's mandatory detention provision, the court reasoned that it could not find a statutory basis to exclude him from the definition of "applicant for admission" given that he is an alien present in the United States and he has not been admitted. *Id.*

This reasoning is consistent with the legislative history of IIRIRA, which reflects that Congress intended to do away with a system in which "illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Matter of Yajure Hurtado*, 29 I&N Dec. at 223-24 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). Interpreting § 1225 to authorize mandatory detention for aliens actively seeking admission at ports of entry but not for those who attempt to evade inspection — such as Petitioner — would be inconsistent with Congressional intent.

5. Respondents' Reading of § 1225 Does Not Render § 1226(c) Superfluous

Petitioner suggests that Respondents' reading of § 1225 would render a recent amendment to § 1226(c) superfluous. That is not correct.

Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain these aliens after "the alien is released [from the custody of another law enforcement agency], without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.* Such aliens may be released only if DHS determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. *Id.* § 1226(c)(4).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-

I, § 2, 139 Stat. 3 (2025), which additionally requires detention of (and prohibits parole for) criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole (8 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack required documentation, (*id.* § 1182(a)(7)); and (2) are "charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

The Government's reading of § 1225(b)(2) does not render superfluous the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in § 1226(c), both (a)(6)(C) and (a)(7) may apply to inadmissible aliens who were admitted in error, as well as those never admitted. *See Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025) (noting that "the Laken Riley Act may apply to situations where § 1225 might not" (citing 8 U.S.C. § 1182(a)(6)(C)(i))). Section 1225(b)(2) has no application to aliens admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present ... without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). But "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Burr*, 590 U.S. 222, 239 (2020).

In any event, § 1226(c) still does independent work, despite the overlap, by preventing the Executive from releasing the specified criminal aliens on parole. Congress's desire to further limit

the parole power with respect to criminal aliens was one reason it enacted the Laken Riley Act. The Act was adopted in the wake of a murder committed by an inadmissible alien who was paroled into the country. The Act thus reflects a "congressional effort to be doubly sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through the parole authority available elsewhere.

6. DHS Cannot Be Equitably Estopped From Enforcing The INA

To the extent Petitioner suggests that Respondents should be estopped from detaining him, because paperwork provided to him stated that that Petitioner would be detained pursuant to the authority contained in "Section 236" of the INA, he is incorrect. "[I]t is well settled that the Government may not be estopped on the same terms as any other litigant." *Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). The Second Circuit has held that the doctrine of equitable estoppel is applied against the Government only "'in the most serious of circumstances' . . . and is applied 'with the utmost caution and restraint.'" *Rojas-Hayes v. INS*, 235 F.3d 115, 126 (2d Cir. 2000) (quotations omitted). To apply estoppel against the Government, there must be a showing of "affirmative misconduct" by the Government, as well as reasonable and detrimental reliance. *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994). In particular, a party must establish "*both* that the Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.'" *See Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (citing *Shalala*, 34 F.3d at 1168). Mere negligence is insufficient to show affirmative misconduct. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010).

Petitioner cannot demonstrate any such affirmative misconduct here. *Rodriguez-Figueroa*

v. Barr, 442 F. Supp. 3d 549 (W.D.N.Y. 2020) is instructive. There, the court concluded that the Government could not be estopped from taking the position that the petitioner, Rodriguez-Figueroa, was subject to detention under § 1225(b) simply because the Government previously treated him as detained pursuant to § 1226(a). *Id.* at 558-59. Rodriguez-Figueroa was detained after being apprehended shortly after unlawfully crossing the border into the United States. *Id.* at 554. His NTA classified him as "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien." *Id.* at 558. A Notice of Custody Determination served upon him stated that the determination was made "[p]ursuant to the authority contained in [§ 1226]." *Id.* at 558. The court nevertheless concluded that Rodriguez-Figueroa was at all relevant times detained pursuant to § 1225(b), holding "that an inartfully drafted form, even one that generates confusion, does not rise to anything more than negligence, and thus, is insufficient to estop the Government." *Id.* Other courts have reached similar conclusions. *See, e.g.*, *Romero v. Bondi*, No. 25-cv-993, 2025 WL 2490659, *2-3 (E.D. Va. July 2, 2025) (holding that form language in a notice of custody determination citing § 1226 did not change the petitioner's status under the law as subject to mandatory detention under § 1225(b), nor did the petitioner's prior release on bond; the petitioner "is still considered an 'applicant for admission' as he has never been admitted into the United States").[5]

[5] Respondents respectfully disagree with decisions of some courts in this district that concluded that references to § 1226 in Government documentation provided to aliens in connection with their processing precluded the Government from lawfully detaining those aliens pursuant to § 1225. *See J.U.*, 2025 WL 2772765, at *5; *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *8. These decisions, in effect, equitably estopped the Government from contending that the petitioners were detained under § 1225 without applying the stringent test for equitably estopping the Government. Furthermore, in concluding that DHS treated the petitioners as being detained pursuant to § 1226, some of these decisions incorrectly relied on the fact that DHS did not determine whether the petitioners should be granted parole pursuant to 8 U.S.C. §

II. Petitioner Cannot State a Claim Under the APA

1. To the Extent Petitioner Sues in Habeas, He Cannot Seek APA Relief

Petitioner's Complaint asserts that his detention violates the INA. The Petitioner does not, however, identify any provision of the INA itself that allows him to enforce his rights under that statute. It appears that Petitioner is instead asserting an APA violation. The APA is not the proper vehicle for Petitioner's claims arising out his detention and his desire to be released from custody. In *Trump v. J.G.G.*, 604 U.S. 670 (2025), in which claims including due process claims were brought under the APA, the INA, and various habeas provisions, the Supreme Court held that where the claims for relief "necessarily imply the invalidity of their confinement," regardless of whether the claimant requests release from confinement, those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." *See J.G.G.*, 604 U.S. at 672 (cleaned up). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim and are not cognizable under the APA.

1182(d)(5)(A). *See J.U.*, 2025 WL 2772765, at *6; *Artiga*, 2025 WL 2829434, at *7. Nothing in § 1182(d)(5)(A) requires that DHS make such a parole determination for any detainee. Section 1182(d)(5)(A) provides that the "Attorney General *may* [with certain exceptions] in his discretion parole into the United States temporarily . . . an alien applying for admission to the United States . . ." (emphasis added). While § 1182(d)(5)(A) authorizes the Attorney General to grant parole to such an alien, the statute does not require that the Attorney General make a determination as to whether such an alien should be paroled, just as it does not require that the alien be paroled. Nor is DHS prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g.*, *United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its error).

2. The APA's Waiver of Sovereign Immunity is Limited By § 704

By its terms, the APA is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claims are independently barred by this limitation. As noted by Justice Kavanaugh's concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *J.G.G.*, 604 U.S. at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention.[6]

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's Verified Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief.

Dated: Brooklyn, New York
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[6] To the extent that the Court permits Petitioner's Second Claim for Relief to continue, Respondents respectfully requests the full 60 days normally provided under Fed. R. Civ. P. 12(a)(2) to respond to that claim.