UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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EDWIN JOSUE PADILLA MOLINA,

Petitioner,

v.

FRANCIS DELEON, IN HIS OFFICIAL CAPACITY AS ACTING ASSISTANT FIELD OFFICE DIRECTOR FOR THE NEW YORK FIELDOFFICE FOR IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; And PAMELA BONDI, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,

Respondents.

Civil Action No.
25-cv-6526 (JMA)

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RESPONDENTS' MEMORANDUM OF LAW IN RESPONSE TO THE ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS SHOULD NOT ISSUE

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PRELIMINARY STATEMENT

Respondents, Acting Field Office Director for the New York Field Office for Immigration and Customs Enforcement ("ICE"), Secretary of the Department of Homeland Security ("DHS"), and the U.S. Attorney General ("Respondents"), by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Megan Freismuth and Robert W. Schumacher, Assistant United States Attorneys, of counsel, respectfully submit this memorandum of law in response to the Court's November 24, 2025 Order for Federal Respondents to show cause why the writ for habeas corpus should not issue.

In his first and second claims, Petitioner argues that his detention violates substantive due process under the Fifth Amendment because, among other things, he was not afforded either pre-deprivation or post-deprivation process. Petition ¶¶ 47-59. Specifically, he alleges that after entering the country in 2013 as a 14-year old, he was designated an "unaccompanied alien child" ("UAC"), placed into removal proceedings, and "allowed to live at liberty by [Defendants] after they initially processed him into the country" and was re-detained years later after reaching adulthood "without notice, without an opportunity to respond, and without any meaningful evaluation as to his particular circumstances, including whether he poses a flight risk or a danger to the community." *Id.* at ¶¶ 12-13, 51. Petitioner further alleges that his removal proceedings were "administratively closed on November 23, 2016", which "effectively suspended" them. *Id.* at ¶ 13. In his third claim, Petitioner argues that his Fourth Amendment rights were violated because he was stopped and detained without probable cause or a warrant. *Id.* at ¶¶ 64-65. In his fourth claim, Petitioner argues that Respondents violated the Immigration and Nationality Act ("INA") because they lack mandatory-detention authority over Petitioner under 8 U.S.C. § 1225(b)(2) because he was already residing in the United States and therefore not seeking admission. *Id.* ¶ 69.

In his fifth claim, Petitioner argues that Respondents violated the Administrative Procedure Act, 5 U.S.C. § 706 *et seq.* because the purported decision to detain Petitioner under the mandatory authority found in 8 U.S.C. § 1225(b)(2) is arbitrary and capricious and otherwise contrary to law. Petition at ¶¶ 73-75.

However, for the reasons set forth below, Petitioner, who has long since attained his majority and is now 26 years of age, and who remains in removal proceedings, has been lawfully detained pursuant to 8 U.S.C. § 1225(b)(2); his remaining claims also fail as a matter of law.

FACTUAL AND PROCEDURAL BACKGROUND

On November 22, 2013, Petitioner was encountered by a Border Patrol Agent with United States Border Patrol ("USBP") near Rio Grande Valley, Texas. Declaration of Mayra A. Pardo, Detention and Deportation Officer at ICE, dated December 1, 2025 ("Pardo Decl.") ¶ 3. The Petitioner claimed to be a native and citizen of Honduras. *Id.* After determining that the Petitioner unlawfully entered the United States from Mexico at a time and place other than as designated by the Secretary of Homeland Security of the United States, the Petitioner was arrested and transported to a nearby Border Patrol facility for processing. *Id.* He was at that time 14 years old, a minor, as Petitioner's birthday is August 18, 1999. *Id.*

On November 22, 2013, USBP served the Petitioner with a Notice to Appear ("NTA"), charging him as inadmissible pursuant to Immigration and Nationality Act ("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, or who arrived in the United State at a time or place other than as designated by the Attorney General. *Id.* ¶ 4. On the same day, DHS filed the NTA with Executive Office for Immigration Review ("EOIR"), thereby commencing removal proceedings against Petitioner under 8 U.S.C. § 1229a ("removal proceedings"). *Id.*

On November 23, 2013 (within 72 hours of November 22) Petitioner had been transferred from DHS custody to the custody of the Office of Refugee Resettlement ("ORR"), a component not of DHS but of the U.S. Department of Health and Human Services ("HHS"). *Id.* ¶ 5. On December 17, 2013, the Petitioner was released by ORR to a sponsor as a UAC. *Id.* ¶ 6.

Meanwhile, in 2014, the Petitioner's case was transferred to the Immigration Court at 26 Federal Plaza, New York, New York ("26 Federal Plaza"). *Id.* ¶ 7.

On June 3, 2014, at the Immigration Court at 26 Federal Plaza, the Petitioner entered oral pleadings in which he admitted all the allegations contained in the NTA and conceded removability as charged. *Id.* ¶ 8. After various court adjournments, an Immigration Judge at 26 Federal Plaza administratively closed proceedings on November 23, 2016 for the Petitioner to pursue relief as a Special Immigrant Juvenile before U.S. Citizenship and Immigration Services (USCIS). *Id.* ¶ 9. Eventually, on March 15, 2022, USCIS denied this application. Id. On May 28, 2025, DHS filed a motion to recalender the Petitioner's removal proceedings with EOIR at 26 Federal Plaza. *Id.* ¶ 10.

On November 23, 2025, the Petitioner was arrested and transported to Central Islip Processing Center in Central Islip, New York, for processing. During processing, ICE served Petitioner with a Form I-200, Warrant for Arrest of Alien. *Id.* ¶ 11. On November 25, 2025, the Petitioner was moved to the Nassau County Correctional Facility ("NCCF"). *Id.* ¶ 12. In order to comply with the Court's Order to remain in the Eastern District of New York, and given the short-term nature of the NCCF accommodations, based upon bed space availability, on November 29, 2025, the Petitioner was transferred back to the Central Islip Processing Center until long term bed space becomes available. *Id.*

On November 26, 2025, an Immigration Judge at 26 Federal Plaza granted the motion to recalender and the Petitioner has an immigration court date on December 17, 2025, at 25 Federal Plaza. *Id.* ¶ 13.

At no time has Petitioner been admitted to the United States. Petitioner is being detained by ICE under 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 14.

ARGUMENT
MOLINA'S HABEAS PETITION SHOULD BE DENIED

I. Relevant Regulatory And Statutory Framework

A. Relevant Authority As To 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 is because, the then INA provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted were subject to mandatory detention, 8 U.S.C. § 1225(a)-(b) (1995), whereas aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231 were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995). In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress, among other things, substituted the term "admission" for the term "entry."[1]

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

Relatedly, Title 8 U.S.C. § 1225(a)(1), was added to the INA as part of IIRIRA, and provides that "an alien *present* in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission" (emphasis added). Thus, this eliminated the prior distinction in process provided to aliens appearing at ports of entry and those who were encountered after they had entered the United States, without inspection and authorization, bypassing approved ports of entry.[2] The INA also now defines "admission" as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

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

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

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. The INA mandates the detention of applicants for admission. 8 U.S.C. §§ 1225(b)(1)(B),(2)(A). 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)(1) and (2) contain no provision for a bond hearing, but aliens subject to § 1225(b)(1) and (2) may be released on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), which authorizes parole for "urgent humanitarian reasons or significant public benefit." *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, subjection (c) of 8 U.S.C. § 1226, as amended by the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025) ("LRA"), lacks a humanitarian parole option.

While § 1226(a)[3] provides an option for release on "bond" or "conditional parole," those options are not available if the alien falls within categories of aliens as set forth in § 1226(c), which include those with various types of criminal history. *Jennings,* at 287-89. Rather, DHS "may release aliens in those categories 'only if [DHS] decides . . . that release of the alien from custody is necessary for witness-protection purposes and 'the alien satisfies [DHS] that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.'" *Id.* at 289 (quoting then-8 U.S.C.§ 1226(c)(2)) (now codified as 8 U.S.C. § 1226(c)(4)).

To § 1226(c), the LRA added § 1226(c)(1)(E)(i),(ii), (2) and (3). Under the LRA, an alien who is inadmissible under §§ 1182(a)(6)(C) or 1182(a)(7), and is charged with, arrested for, or convicted of, specified types of crimes, shall be detained by DHS "if not otherwise detained by Federal, State, or local officials." Such an alien is not eligible for humanitarian parole under § 1182(d)(5) and may only be released from custody for the same limited set reasons set forth in § 1226(c)(4), enumerated above, as other aliens subject to mandatory detention under § 1226(c).

B. Relevant Authority as to Unaccompanied Alien Children

i. The Homeland Security Act of 2002

The Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 ("HSA"), created DHS and transferred most immigration functions formerly performed by the Immigration and Naturalization Service to the newly-formed DHS and its components, including CBP, USCIS and ICE. *See also* DHS Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (also set forth as a note to 6 U.S.C. § 542). Congress separately transferred to a component of

[3] In general, § 1226(a) 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.

HHS, the Office of Refugee Resettlement ("ORR"), the responsibility for caring for unaccompanied alien children ("UAC") "who are in Federal custody by reason of their immigration status." HSA, § 462(a)(b)(1)(A), codified as amended at 6 U.S.C. § 279(b)(1)(A) (2002). That is, Congress gave ORR the initial responsibility of caring for any UAC. Congress did not preclude UACs from being placed into removal proceedings. *See* 8 U.S.C. § 1232(a)(5)(D).

The HSA defines a UAC as a child who is not yet 18, lacks "lawful immigration status," and has no parent or legal guardian able to provide care and physical custody in the United States. 6 U.S.C. § 279(g)(2). Congress prohibited ORR from releasing UACs on their own recognizance. *See id.* § 279(b)(2). The HSA transferred to ORR the responsibility, after receiving a UAC from DHS, for making UAC placement decisions. 6 U.S.C. § 279(b)(1)(C), (D).

ii. Trafficking Victims Protection Reauthorization Act of 2008

In 2008, the TVPRA codified certain protections related to the custody of UACs. Consistent with the HSA, the TVPRA requires that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1). However, Congress also required that "[e]xcept in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3). Thus, the combination of the HSA and the TVPRA requires that all UACs in DHS custody be transferred to HHS, and that HHS provide for UACs in its care while they are in its custody.

However, HHS does not retain custody of UACs until they turn 18. The TVPRA requires that UACs in HHS custody be "promptly placed in the least restrictive setting that is in the best

interest of the child." *Id.* § 1232(c)(2)(A). It delegates to the Secretary of HHS the authority to make such placement decisions. *Id.* A UAC may be placed in a "secure facility" within ORR or if available in the care of a "suitable family member." *See id.* The latter placement divests HHS (and its component ORR) of custody of the child. Indeed, the regulations implementing this statutory directive specifically state that once ORR releases a UAC to "vetted and approved" sponsor, the UAC is "release[d] . . . from ORR custody." *See* 45 C.F.R. § 410.1200.

While 8 U.S.C. § 1232(c)(2)(B) provides a consideration of the least restrictive setting for a UAC — that is, "an unaccompanied alien child *in the custody of [HHS],*" § 1232(c)(2)(A) — who "reaches 18 years of age *and is transferred to the custody of the Secretary of [DHS]*" (emphasis added), by its plain terms, this statute only applies to aliens who reach 18 *while in the custody of* HHS, *who are transferred* to DHS. There is no provision that requires a consideration of the least restrictive setting for an alien who was no longer in HHS custody at the time he turned 18, and was not transferred to DHS at that time.

Nothing in 8 U.S.C. § 1232 cross-references any other detention authority in the INA or suggests that when ORR takes an unaccompanied child into custody or releases him from custody, he ceases to be an "applicant for admission."

II. Molina's Due Process Claims Should Be Dismissed

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.").

A. 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. Stated further, "aliens who arrive at ports of entry — even those paroled elsewhere in the country for years pending removal — are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court

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" and who have developed significant ties to this country during this 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); *Salim v. Tryon*, No. 13-cv-6659, 2014 WL 1664413, *2 (W.D.N.Y. Apr. 25, 2014) ("The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings."); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (holding that petitioner paroled into the United States and continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due

process 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").

B. Molina Was Lawfully Detained Under 8 U.S.C. § 1225(b)(2)

USBP detained Petitioner after discovering him unlawfully entering the United States from Mexico on November 22, 2013. Pardo Decl. ¶ 3. On that date, he was served with an NTA, charging him as inadmissible pursuant to INA § 212(a)(6)(A)(i). *Id.* ¶ 4. On November 22, 2013, DHS filed the NTA with EOIR, commencing removal proceedings against Petitioner under 8 U.S.C. § 1229a. *Id.* ¶ 4. He was released on December 17, 2013 to a sponsor as a UAC. *Id.* ¶ 6. Eventually his removal proceedings were paused, in order that he might pursue alternative relief from removal before USCIS, but that proved unsuccessful as his benefit application was denied. *Id.* ¶ 9.

1. Administrative Closure Did Not Terminate Molina's Removal Proceedings

As Petitioner acknowledges, his removal proceedings were not terminated or dismissed when, in November 2016, they were administratively closed. Petition ¶ 13 ("When such proceedings are administratively closed, they are effectively suspended."). Indeed, administrative closure is "'docket management tool that is used to temporarily pause removal proceedings.'" *Reid v. Bondi*, 132 F.4th 109, 124 n.12 (2d Cir. 2025) (quoting *Matter of Cruz-Valdez*, 28 I. & N. Dec. 326, 326 (A.G. 2021); *Matter of W-Y-U-*, 27 I. & N. Dec. 17, 18 (B.I.A. 2017)). Administrative

closure does not "terminate or dismiss the case, but rather 'remove[s] a case from an Immigration Judge's active calendar or from the [BIA's] docket.'" *Id.* (quoting *Matter of Avetisyan*, 25 I. & N. Dec. 688, 692 (B.I.A. 2012)); *Garcia v. Garland*, 64 F.4th 62, 65 (2d Cir. 2023) (citing *Matter of Avetisyan*, 25 I. & N. Dec. 688, 692 (B.I.A. 2012)). Such closure might be used "to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period of time." *Garcia*, 64 F. 4th at 65. The parties may at any time move to re-calendar the case. *Avetisyan*, 25 I & N. Dec. at 695. In other words, administrative closure is like a stay or a continuance and, like a stay or continuance, adjourns and delays proceedings unless and until the case is reopened at the behest of one or both parties or the Immigration Court. *See id.* at 692 (noting that administrative closure is a method to "defer further action").

Accordingly, notwithstanding the administrative closure of such, Petitioner has remained in removal proceedings since the time he illegally entered the United States in 2013, within the meaning of removal proceedings referenced under 8 U.S.C. § 1225(b)(2).

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

Petitioner falls squarely 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 explained above, 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). Indeed, Petitioner *cannot* demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as someone who is present in the United States without being admitted or paroled, he is inadmissible under 8 U.S.C. § 1182(a)(6). Indeed, he has conceded his inadmissibility to an IJ. Pardo Decl., ¶ 8. Thus, under the plain reading of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b). The BIA and many courts have endorsed this plain application of the statutory text. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) ("[t]he inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225."); *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 supported by the Supreme Court. As explained in *Jennings*, all "applicants for admission" fall into one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are applicants for admission and assert a credible fear of persecution, and it mandates detention of such aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), B(iii)(IV). Section 1225(b)(2), on the other hand, is "broader" and "serves as a catchall provision that applies to *all* applicants for admission not covered by 1225(b)(1)." *Jennings*, 583 U.S. at 837 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens "arriving" in the United States and § 1225(b)(2) applies to all "other" aliens who are applicants for admission, an alien does not lose suddenly get deemed admitted – to wit, lose his "applicant for admission" categorization -- simply he because was previously a UAC for a limited period while a minor. Otherwise all UACs would be deemed admitted, and there would be no need for asylum applications to avoid being removed, as asylum grantees are not deemed admitted. Moreover, 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)).

Taken together, the plain language of §§ 1225(a) and 1225(b) make it clear that applicants for admission, including those "present" in the United States, are subject to mandatory detention during the pendency of their removal proceedings under § 1225(b)(2) and are not eligible for a bond. Thus, here, as in *Thuraissigiam*, because Petitioner is an inadmissible applicant for admission, he "requests a privilege and has no constitutional rights regarding his application[.]" *See Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right."). Instead, Petitioner has "only those rights regarding admission that Congress has provided by statute." *See Thuraissigiam*, 591 U.S. at 140; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). The statutory framework enacted by Congress requires that Petitioner be detained.

Petitioner received the process due under the TVPRA, having been transferred to HHS, and then released by HHS to a sponsor under 8 U.S.C. § 1232(b) and (c)(2)(A). Pardo Decl. ¶¶ 5-6. During the time he was a UAC, Petitioner was entitled to certain protections under 8 U.S.C. § 1232. *See also* 6 U.S.C. § 279(g)(2) (UAC status dependent on alien being under 18 years of age). He received those protections. However, it cannot be the case that for decades after, aliens who are no longer UACs enjoy those protections. And as noted above, being designated a UAC for a necessarily limited period has no effect on applicant for admission status; indeed, Petitioner conceded during removal proceedings that he had not been admitted and was, indeed, inadmissible. Pardo Decl. ¶ 8.

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

Respondents' statutory construction regarding mandatory detention for all applicants for

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

A contrary reading of the INA would ignore 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, Including As It Relates To Petitioner, Mandates Petitioner's Detention Without Bond Pending The Outcome Of His Removal Proceeding

Respondents' construction of the INA, consistent with the text of the statute and Supreme Court jurisprudence, is further bolstered by recent persuasive precedent from the BIA — the highest administrative body for interpreting and applying the INA.[4] Specifically, in *Matter of*

[4] While BIA decisions are not binding on this Court, *Matter of Yajure Hurtado* is consistent with the plain language of the relevant statutes, legislative history, and Supreme Court precedent, as

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. Similarly, Petitioner is subject to mandatory detention under 8 USC § 1225, and he is ineligible for bond as he is not being detained under 8 USC 1226.

4. The Cases Cited By Petitioner Are Inapposite Or Wrongly Decided

Petitioner asks this court to side with other district courts around the country that have concluded that Section 1225(b)(2)(A) applies exclusively to encounters at the border, while 1226(a) applies to noncitizens, like Petitioner who were already present in the country, albeit unlawfully, at the time of their encounter with immigration authorities. Petition at ¶¶ 27, 28 (collecting cases). Respondents respectfully assert that their detention of Petitioner is lawful while

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discussed further herein. *See Fernandez Arevalo v. Bondi*, 130 F.4th 325, 335-36 (2d Cir. 2025) (construing an INA statute in the same manner as a BIA decision that was consistent with Article III case law, notwithstanding *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024)).

acknowledging that many federal district courts, including Your Honor in *Montoya v. Bondi, et al.*, No. 25-CV-06363 (JMA), 2025 WL 3280762, at *1 (E.D.N.Y. Nov. 25, 2025), have not been persuaded by ICE's arguments about the interpretation of 1225(b)(2)(A).[5] *See also* Petition at ¶¶ 27, 28 (collecting cases). Notwithstanding, as set forth above, the BIA, the highest administrative body that interprets immigration law in immigration courts, has held that Section 1225(b)(2)(A) does apply to noncitizens like the Petitioner. *See Hurtado*, 29 I. & N. Dec. 215. ICE and the immigration judges accordingly must follow that decision in litigation relating to a noncitizen's detention in immigration proceedings. ICE continues to respectfully assert that position before this Court in the absence of precedential authority to the contrary from the Second Circuit

In *Rojas*, 2025 WL 3033967, at *8, the district court rejected the reasoning of the types of cases cited by Petitioner and all of the same arguments that Petitioner is making here. 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.*; *see also Vargas Lopez v.*

[5] Respondents note that this Court decided *Montoya* adversely on related issues, citing as persuasive the same cases as Petitioner cites, but that this court did not set out reasoning in its preliminary decision on a temporary restraining order. Accordingly, the Respondents respectfully submit this briefing on these issues.

Trump, -- F. Supp. 3d -- , 2025 WL 2780351, at *9-10 (D. Neb. Sept. 30, 2025) (alien was subject to mandatory detention under § 1225 even though he "illegally remained in this country for years").

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

In sum, the plain language and legislative history of the relevant statutes support the conclusion that aliens such as Petitioner are subject to mandatory detention under § 1225.

5. DHS Cannot Be Equitably Estopped From Enforcing The INA

To the extent Petitioner suggests that Respondents should be estopped from detaining him, he is wrong. "[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.

III. Molina's APA Claim Should Be Dismissed

Because this matter at bottom challenges Petitioner's ongoing immigration detention and seeks release from custody, the sole vehicle for such a challenge is habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2005) (challenges that necessarily imply the invalidity of immigration detention fall within the "core" of the writ of habeas corpus and must be brought in habeas). Accordingly, Molina's APA claim should be dismissed.

IV. Molina's Fourth Amendment Claim Should Be Dismissed

To the extent Petitioner asserts a Fourth Amendment claim, because his civil detention was a reasonable and lawful exercise of federal immigration authority, that claim must fail. As the Supreme Court recognized in *Abel v. United States*, 362 U.S. 217 (1960), administrative arrests for deportation have a long-standing statutory history and are distinct from arrests for criminal offenses. The Supreme Court held that that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such

a long-sanctioned practice of government at the behest of a party who not only did not challenge the exercise of authority below, but expressly acknowledged its validity." *Abel*, 362 U.S. at 230. Petitioner's arrest was not a criminal arrest requiring a judicial warrant or probable cause of a new crime; rather, it was a civil, administrative arrest carried out pursuant to the broad authority granted by Congress to enforce the nation's immigration laws. Thus, this claim warrants dismissal.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Molina's Petition and grant such other further relief that the Court deems just and proper.

Respectfully Submitted,

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