UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Dennis Alexander MINARCAJA CONCHA,

Petitioner,

v.

TODD LYONS, field office director for U.S. Immigration and Customs Enforcement (ICE) in New York, Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General,

In their official capacities,

Respondents.

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Civil Action No.
25-cv-6695 (NJC)

MEMORANDUM OF LAW IN RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE WHY PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE GRANTED

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PRELIMINARY STATEMENT

Respondents respectfully submit this memorandum in response to the Court's Order to Cause dated December 4, 2025, as supplemented by the Court's Order dated December 5, 2025. For the reasons set forth herein, the Court should deny Petitioner's writ of habeas corpus and dismiss this action and hold that Petitioner is not a *Bautista* class member.

RELEVANT STATUTORY AND REGULATORY FRAMEWORK

Prior to 1996, the Immigration and Nationality Act, 8 U.S.C. § 1101 *et. seq.* ("INA") treated aliens differently based on whether the alien had presented at a port of entry or evaded inspection and 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 Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "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 [immigration] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.[1]

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). 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), 1226(a) (1995). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings.

[1] Aliens who arrive at a port of entry have physically "entered" the United States, but under the longstanding "entry fiction" doctrine, "aliens who arrive at ports of entry … are 'treated' for due process purposes as if stopped at the border." *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

Hurtado, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. 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 "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 (2012)); *see Hing Sum*, 602 F.3d at 1100 (similar); 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").

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."[2] 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

[2] 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)

applicant for admission" (emphasis added). Thus, this addition 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. Among other things, IIRIRA sought 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." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). 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). Also important, is that the section 1225 defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission or

otherwise seeking admission . . . shall be inspected by immigration officers") (emphasis added).

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. IIRIRA provided for so-called "expedited removal proceedings," *Thuraissigiam*, 591 U.S. at 109-113, and non-expedited removal proceedings and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. § 1225(b)(1)-(2).

Under § 1225(b)(1), expedited removal proceedings may be commenced against a subset of aliens—those who (1) are "arriving in the United States," or (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2)(A)[3] requires that applicants for admission not covered by subsection (b)(1) be detained pending removal proceedings:

> Subject to subparagraphs (B) and (C), 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s detention mandate); *Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin").

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 U.S.C. § 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.

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[3] Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

While § 1226(a)[4] 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. [5] Rather, the Department of Homeland Security ("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)).

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[4] 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. The statute provides that "[o]n a warrant issued by the Attorney General, 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). Detention under this provision is generally discretionary. The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[4] In practice, DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge's custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Conditional parole under Section 1226(a) is distinct from humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

[5] 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 a liens after "the alien is released, 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).

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).

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is an Ecuadorian national. DE 2 ¶ 1. On July 13, 2022, Petitioner entered the United States unlawfully by swimming across the Rio Grande River and crossing the international border in the vicinity of Eagle Pass, Texas. Declaration of Deportation Officer dated December 2, 2025 ("Shinas Decl."), submitted herewith, ¶ 3. Petitioner had not been admitted or paroled after inspection by an Immigration Officer at a port of entry. *See* DE 2-1 at p.1. Petitioner encountered a Border Patrol agent at approximately 8:50 a.m. in the vicinity of Eagle Pass, Texas. Shinas Decl. ¶ 3.

On July 18, 2022, a Form I-200 Warrant for Arrest of Alien was issued pursuant to INA § 287 (codified as 8 U.S.C. § 1357), stating that the Petitioner was taken into custody in accordance with INA Section 236 (codified as 8 U.S.C. § 1226). DE 2-1 at p.4; Shinas Decl. ¶ 4. It was determined that Petitioner, an applicant for admission, had illegally entered the United States without inspection, and did not possess the necessary legal documentation to enter, pass through, or remain in the United States. Shinas Decl. ¶ 4. Petitioner was issued a Notice to Appear ("NTA") and placed into removal proceedings, in which he was charged as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") (codified as 8 U.S.C. §

1182(a)(6)(A)(i)). *Id.* He was also issued an Order of Release on Recognizance Form I-220A ("ROR"), and Notice of Custody Determination Form I-286. *Id.*

The ROR contained several conditions, including, *inter alia*, that Petitioner "must not violate any local, State or Federal laws or ordinances." DE 2-2 at p.1. The ROR also provided "NOTICE," in bold lettering, that: "Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement." *Id.*

On November 10, 2022, Petitioner appeared before an Immigration Court in New York City without an attorney. Shinas Decl. ¶ 5. The immigration judge gave advisals and granted Petitioner's request for an adjournment to seek legal representation. *Id.* The case was adjourned to April 13, 2023. *Id.* However, on March 21, 2023, Petitioner's attorney filed a motion to adjourn the case, due to attorney unavailability for a religious observance, which was granted by the court and the case was adjourned to September 7, 2023. *Id.* ¶ 6.

On October 26, 2023, Petitioner filed an application for relief before the Immigration Court. *Id.* ¶ 7. On October 27, 2023, the Immigration Court issued a scheduling order. *Id.* ¶ 8. On January 14, 2024, the Immigration Court issued a Notice of Hearing for an Individual Merits hearing on March 12, 2025. Shinas Decl. ¶ 9. On March 12, 2025, the Immigration Court adjourned the Individual Merits hearing to November 13, 2026 sua sponte due to insufficient time to complete the hearing. *Id.* ¶ 10.

On September 30, 2025, Petitioner was arrested by the New York City Police Department for Possession of a Forged Instrument in the 3rd Degree pursuant to New York Penal Law § 170.20,

a class-A misdemeanor, as well as multiple Vehicle and Traffic Law infractions. *Id.* ¶ 11. The status of these charges is presently unknown. *Id.*

On November 17, 2025, Petitioner was again arrested by the New York City Police Department for Possession of a Forged Instrument in the 3rd Degree pursuant to New York Penal Law § 170.20. *Id.* ¶ 12. The status of this charge is presently unknown. *Id.*

On December 3, 2025, Petitioner was encountered at 6851 Jericho Turnpike, Syosset, New York 11791, pursuant to the reporting requirements of his ROR. Shinas Decl. ¶ 13. After reviewing all relevant information and following all procedures, it was determined that Petitioner's release under the ROR should be revoked because his multiple arrests violated the conditions of the ROR. *Id.* A Form I-200 Warrant of Arrest was issued. *Id.* Petitioner was taken into Immigration and Customs Enforcement ("ICE") custody that day pending continuation of removal proceeds, and detained pursuant to INA Section 235(b)(2)(A) (codified as 8 U.S.C. § 1225(b)(2)(A)). *Id.* ¶ 14.

On December 3, 2025, Petitioner was transported to the Central Islip Hold Room, in Central Islip, New York for processing. *Id.* ¶ 15. On December 4, 2025, at or around 10:00 am, Petitioner was transferred from the Central Islip Hold Room to the Nassau County Correctional Facility, in East Meadow, New York. *Id.* ¶ 16. On December 6, 2025, at or around 11:00 pm, Petitioner was transferred to the Elizabeth Detention Facility in Elizabeth, New Jersey. Shinas Decl. ¶ 18.

ARGUMENT

I. Petitioner Fails To State A Claim For Violation Of Procedural Due Process

Petitioner's claim that his detention violates procedural due process (DE 2 at p. 9), pursuant to the Constitution's Fifth Amendment, 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, Petitioner does not – because he cannot – point to any statute or regulation to support process that is due to him that he has not received. Applicants for admission into the United States – like Petitioner – have limited process afforded by Congress. That process includes mandatory detention pending removal and access to parole (not bond). Petitioner has received and continues to receive all process due to him.[6]

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

[6] It cannot be disputed that Petitioner has separately received process before the immigration court in connection with his removal proceedings, including access to counsel and a forthcoming individual merits hearing. Shinas Decl. ¶¶ 5-7, 10.

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 *Thuraissigiam*, 591 U.S. at 139-40. 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"). Thus, Petitioner's procedural due process claim is insufficient as a matter of law.

B. 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.'" (quoting 8 U.S.C. § 1225(a)(1)).

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). *See also* DE 2-1 at p.1 (Notice to Appear charging Petitioner with being "an alien present in the United States without being admitted or paroled" in violation of 8 U.S.C. § 1182(a)(6)(A)(i)). Thus, under the plain reading of the statutory text, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b).

Several courts, including two in this Circuit, have endorsed this application of the statutory text. In *Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), the alien entered the United States without having been admitted, was released on his own recognizance due to lack of bed space, and remained in the country unlawfully for two years while

he remained; he was recently detained pursuant to 8 U.S.C. §1225(b)(2)(A), which requires mandatory detention while an applicant for admission remains in removal proceedings. The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of §1225(b)(2)(A), the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Chen,* 2025 WL 3484855, at *4. She reasoned that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5-7; *accord, e.g., Candido v. Bondi, et al.*, No. 25-cv-867 (JLS), 2025 WL 3484932,. at *2 (W.D.N.Y. Dec. 4, 2025) (finding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present unlawfully for two decades without having been admitted, noting that "[t]he fact that more district courts…have decided this issue differently from this court is neither binding nor persuasive."); *Duenas Garcia v. ICE,* No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *1 (M.D. Fla. Nov. 25, 2025) ("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.'"); *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); *Vargas Lopez v. 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"); *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");

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. 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)).[7]

Every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal or voluntary departure. Section 1225(a)(3) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or

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[7] *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with Respondents' reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

To be sure, *Jennings* described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to aliens "already in the country". 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens "once inside the United States"). But "[t]he language of an opinion is not always to be parsed [like the] language of a statute," and instead "must be read with a careful eye to context." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (quotation omitted). When describing the scope of Section 1226 in particular, *Jennings* refers to aliens "present in the country" who are removable under 8 U.S.C. § 1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. The Government's interpretation is perfectly consistent with that understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States but are now removable. *Supra*, pp. 34-35. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* "alien[] already in the country," and the passage's use of the word "certain" conveys the opposite. The Supreme Court did not rule on whether non-admitted or inadmissible aliens fell within the boundaries of § 1226(a) as opposed to § 1225(b)(2)(A). At a minimum, the quoted language is ambiguous and such uncertain language is insufficient to displace the statute's plain text and the manifest congressional purpose; that is especially so, as no part of the holding in *Jennings* required resolution of the precise scope of Sections 1225(b) and 1226.

readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). "Seeking admission" is thus "a term of art" that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful," but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743 (emphasis in original). Neither the duration of an alien's unlawful presence in the United States nor his distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde v. Noem*, No. 25-cv-168, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025). For example, Section 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country. 8 U.S.C. § 1225(a)(1). None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," *supra*, pp. 26-27—not the exclusive way. For example, lawful permanent

residents returning to the United States are not "applicants for admission" but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain admission.

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.

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. *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).

C. *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.[8] 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

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

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. Notably, one district court judge who rejected Respondents' position prior to being made aware of *Hurtado* decided, in light of *Hurtado*, that Respondents' position is correct. *Topal v. Bondi*, No. 25-cv-1612, 2025 WL 3486894, at *1-2 and n.11 (W.D. La. Dec. 2, 2025) (noting prior decision authored by the same judge, *Lopez Santos v. Noem*, 25-cv-1193. 2025 WL 2642278, at *3-5 (W.D. La. Sept. 11, 2025)).

D. The Contrary Decisions Are Incorrect

Respondents recognize that, while there have been favorable decisions, including in the Second Circuit as noted above, many judges around the country have disagreed with the Respondents' reading of § 1225(b)(2)(A). 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 § 1225(b)(2)(A). The only provision that would allow their detention, this reasoning continues, would thus be § 1226. Respondents respectfully disagree with the reading of § 1225(b)(2)(A) in these cases. For instance, in *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 15, 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 the district court already present there." *Id.* at *7. This analogy, focusing on practicality misses the manner in which Congress defined "admission" in the INA. There, 8 U.S.C. § 1101(a)(13) defines "admission" 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). Holding, as did *Lopez Benitez*, "that the mandatory detention provision of [§] 1225 categorically does not apply to aliens who are present in the United States as a result of their illegal entry into the country flies in the face of defined statutory text." *Chen*, 2025 WL 3484855, at *5. Thus, a person who is physically present in the United States without lawful "admission," as defined in § 1101(a)(13), remains an "applicant for admission." The *Lopez Benitez* movie theater analogy therefore fails.

Respondents also respectfully submit that other district court decisions imbuing significance to the distinction between the terms "seeking admission" and "applicant for

admission" are similarly unpersuasive. *See, e.g.*, *Ye v.* Maldonado, 25-cv-6417. 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-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.).[9] 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 superfluous. *Id.* This conclusion ignores the fact that 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, it was Congress, not the executive branch, that deemed all aliens present in the United States who have not been admitted as "applicants for admission," regardless of whether they are in fact actively "seeking admission." *See Chavez*, 2025 WL 2730228, at *4 (aliens who were present in the United States and have not been admitted are

[9] This case is also 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, not owing to statutory interpretation, but on the grounds that for those paroled under 8 USC § 1182(d)(5), notice is required for early termination and, there, petitioner had received no notice. Respondents respectfully note that Diallo had never in fact been granted parole under § 1182(d)(5) and instead had been released on his own recognizance, but that in any event, the case is inapposite factually as here, where Petitioner had not been released by DHS but instead had been transferred to HHS by express statutory command because he was a UAC, and released by HHS again pursuant to express statutory command, and once he turned 18, he automatically ceased being a UAC because he no longer met the statutory definition. 6 U.S.C. § 279(g)(2).

"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). Congress further made this clear in 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). Attempts to carve off "applicants for admission" from those "seeking admission," given that the statute expressly so defines them, are incorrect.

Notably, the decisions that distinguish between "applicants for admission" and "seeking admission" restrict mandatory detention to those "seeking admission" -- *i.e.*, those engaged in some active effort to gain admission. *See, e.g.*, *Rodriguez-Acurio*, 2025 WL 3314420, at *22. By doing so, these decisions "establish a perverse incentive in which an alien becomes subject to harsher penalties only upon actively seeking 'lawful' status. *Chen*, 2025 WL 34894855, at *5.

This reasoning of decisions such as *Chen,* 2025 WL 34894855, 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.

Nothing in the LRA changes this analysis, despite some decisions, *see, e.g., Rodriguez-Acurio,* 2025 WL 331420, contending that the government's interpretation of § 1225(b)(1) renders superfluous the mandatory detention provisions of 8 U.S.C. § 1226(c). Not least, the mandatory detention provisions of § 1226(c) – which apply only to certain types of aliens – differ from the mandatory detention provisions of § 1225(b)(2) in a least one important respect. An alien detained under § 1226(c) may be released only on grounds set forth in § 1226(c)(4) – *i.e.*, if the release "is necessary to provide protection to a person who is a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate" of such persons; and if the alien "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." By contrast, a person subject to mandatory detention under § 1225(b)(2) may be released on parole under 8 U.S.C. § 1182(d)(5)(A) for "urgent humanitarian reasons or significant public benefit," a standard that differs from the § 1226(c)(4) standard. Thus, there is no superfluity between § 1225(b)(2), on the one hand, and § 1226(c) – both before and after it was amended by the LRA – on the other hand. As another district court has recognized, the LRA "simply removed the Attorney General's detention discretion for aliens charged with specific — but not all — crimes." *Chavez*, 2025 WL 2730228, at *5; *accord, Valencia*, 2025 WL 3205133, at *4 (E.D. Cal. Nov. 17, 2025); *Rojas*, 2025 WL 3033967, at *9.[10]

[10] District court decisions to the contrary do not take account of the different options for release that the LRA precluded to certain individuals, and are therefore incorrect in identifying the LRA as evidence that the Government's argument was in error. *J.U.*, 2025 WL 2772765, at *7; *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *8. Indeed, in *Artiga*, the district judge recognized that parole is a form of "politically sensitive" relief from mandatory detention under § 1225, yet failed to acknowledge that the LRA precluded certain applicants for admission who had been charged with certain crimes from that benefit by making detention mandatory under a statute

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.

E. ICE Cannot Be Equitably Estopped From Enforcing The INA

In limiting the reach of § 1225(b) mandatory detention, certain courts have pointed out that ICE has not detained aliens who, according to Respondents, are subject to § 1225(b) mandatory detention. *See. e.g. Rodriguez*-Acurio, 2025 WL 3314420, at *12 (noting "Respondents' inability [to] explain why Rodriguez-Acurio was not detained for three years while purportedly subject to mandatory detention"). Yet the "failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law". *Chen*, 2025 WL 3484855, at *7 (citing, *inter alia*, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024)).

Any argument that Respondents should be estopped from detaining him now, because his Form I-200, Warrant for Arrest of Alien and Form I-286, Notice of Custody Determination, and ROR reflect that Petitioner would be detained pursuant to the authority contained in "Section 236" of the INA (DE 2-2), *i.e.,* 8 U.S.C.§ 1226, should fail. "[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

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that did not afford that relief. *See Rojas*, 2025 WL 3033967, at *9 ("Nothing in the LRA suggests any Congressional thoughts concerning [the interpretation of Sections 1225 or 1226].").

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. He was initially detained under § 1225(b) but later detained under § 1226(a). *Id.* at 558. DHS performed a custody determination pursuant to § 1226 and decided to continue his detention. *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").[11] The Court should hold the same here.

F. Petitioner Was Properly Detained After He Violated the Conditions of his ROR

The facts in this case are distinguishable from the facts in other cases in which the district courts found due process violations. For example, in *Rodriguez-Acurio*, the petitioner was temporarily paroled from ICE custody, pursuant to 8 U.S.C. § 1182(d)(5)(A), based on a "heightened risk" that she could "contract the COVID-19 virus." *Rodriguez-Acurio*, 2025 WL 3314420, at *3 (internal citation and quotation marks omitted). In holding that the government did not have an interest in subsequently detaining Rodriguez-Acurio without a hearing, this Court

[11] Respondents respectfully submit that the decisions of some courts in this district, which 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, were wrongly decided. *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. § 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).

reasoned, *inter alia*, that the detention of Rodriguez-Acurio with "no showing of changed circumstances violate[d] her due process rights." *Id.*, at *30; *see also id.*, at *30 ("Respondents have also pointed to no evidence in the record showing that Rodriguez-Acurio is a flight risk or a danger to the community or that anything has changed since she was released on humanitarian parole . . . ."); *id.*, at *1 ("She has never been charged or convicted of any crime in this country"). Here, by contrast, the Petitioner was temporarily released from ICE custody pursuant to an ROR that contained numerous conditions, including, *inter alia*, that Petitioner "must not violate any local, State or Federal laws or ordinances." DE 2-2 at p.1. The ROR provided "NOTICE," in bold lettering, that: "Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement." *Id.* Importantly, unlike Rodriguez-Acurio, Petitioner was arrested on multiple occasions and charged with multiple crimes in the months immediately preceding his re-detention. Shinas Decl. ¶¶ 11, 12. As a result, a determination was made that Petitioner's release should be revoked because his arrests violated the conditions of his ROR. Id. ¶ 13. Accordingly, Petitioner has failed to demonstrate a procedural due process violation.

II. Petitioner Fails to State A Claim For Violation Of Substantive Due Process

Petitioner's substantive due process claim should likewise be dismissed for failure to state a claim. A substantive due process claim must allege governmental conduct that 'is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005) (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8, 118 S. Ct. 1708 (1998)). Conduct is conscience-shocking only if it was "intended to injure in some way unjustifiable by any government interest." *Lewis*, 523 U.S. at 849. Where no fundamental

right is at stake, "governmental regulation need only be reasonably related to a legitimate state objective." *Goe v. Zucker*, 43 F.4th 19, 30 (2d Cir. 2022) (internal quotation omitted).

No court has ever held that an alien not lawfully admitted to the United States holds a fundamental right to remain at liberty in the United States. To the contrary, courts have held that "an applicant for initial entry has no constitutionally cognizable liberty interest in being permitted to enter the United States." *Rafeedie v. INS*, 880 F.2d 506, 520 (D.C. Cir. 1989), and the Supreme Court, in *Thuraissigiam*, 140 S. Ct. at 1982-83, held that because aliens newly arriving in the United States, including those apprehended after unlawful entry, lack Fifth Amendment due process rights regarding their admission, they are entitled to "only those rights regarding admission that Congress has provided by statute." And, importantly, the Supreme Court has held that the liberty interest of an alien under a final removal order is not fundamental. *See Demore*, 538 U.S. at 511. Indeed, Congress expressly authorized post-removal-order detention under 8 U.S.C. § 1231(a)(6), and the Supreme Court has repeatedly underscored the plenary power of the political branches over admission, exclusion, and removal. *See, e.g., Trump v. Hawaii*, 585 U.S. 667, 702, (2018); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

Detaining Petitioner is rationally related to the government's interest in enforcing immigration laws. *See Avramenkov v. INS*, 99 F. Supp. 2d 210, 217 (D. Conn. 2000) ("it does not shock the conscience that a certain class of aliens subject to almost certain removal are detained pending removal"). Petitioner's substantive due process claim thus fails.

III. Petitioner Is Not a *Bautista* Class Member

Petitioner is not a member of the class certified in *Lazaro Maldonado Bautista, et. al. v. Ernesto Santacruz Jr*, Case No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25,

2025). The *Bautista* court defines its class as individuals who crossed the border illegally who "were not . . . apprehended upon arrival." *Bautista*, 2025 WL 3288403, at *9. Petitioner here was detained when he entered this country illegally on July 13, 2022. Shinas Decl. ¶ 3. Therefore, based on the express terms of the *Bautista* court's order, Petitioner does not qualify for class membership and *Bautista* has no effect on this case.

Even if Petitioner were a class member, which he is not, the *Bautista* decision would have no impact here. The *Bautista* court's orders did not enter any declaratory judgment as to the nationwide class. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (granting motion for partial summary judgment but expressly not ordering any relief); *see also Bautista*, 2025 WL 3288403, at *9-10 (granting motion for class certification but ordering only that class be certified, Petitioners be appointed class representatives, Petitioners' counsel be appointed class counsel, ordering a joint status report and setting status conference); *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr*, Case No. 5:25-cv-01873-SSS-BFM, Docket Entry No. 42-1 (C.D. Cal. Aug. 11, 2025) (Proposed Order (proposing specific declaratory relief that the Court did not enter)). The *Bautista* court also expressly declined to enter final judgment as to the claims at issue in the motion for partial summary judgment under Federal Rule of Civil Procedure 54(b). *See Bautista*, 2025 WL 3289861, at *11. Rather, the *Bautista* court set a January 9, 2026 joint status report deadline, and January 16, 2026 status conference, indicating that the Court intends to address the question of final relief at a later date. *Bautista*, 2025 WL 3288403, at *9-10.

Absent an entry of final judgment on the entire case, or a certification of partial final

judgment under Federal Rule of Civil Procedure 54(b), there is no declaratory judgment. The partial summary judgment ruling does not operate as a "judgment" because it is not an appealable order and "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could have preclusive effect as to class members.

To be proper, a declaratory judgment must have preclusive effect: "Without preclusive effect, a declaratory judgment is little more than an advisory opinion." *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023); *see also Wells v. Johnson*, 150 F.4th 289, 301 (4th Cir. 2025) (stating that the only reason a proper declaratory judgment does not violate Article III's requirements is because it has preclusive effect between the parties). And preclusive effect cannot be obtained without sufficient finality. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (citing Restatement (Second) of Judgments § 27, p. 250 (1980), for the general rule that an issue must be determined by a "valid and final judgment" for preclusion to apply); *Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir. 1983) (affirming district court decision not to apply preclusive effect to an interlocutory decision that "could not have been the subject of an appeal at the time"); Restatement (Second) of Judgments § 27, p. 250 (1980) (issue preclusion does not apply when the "party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action"); *id.* at cmt. a ("[T]he availability of review for the correction of errors has become critical to the application of preclusion doctrine.").

In short, the *Bautista* court has expressly declined to enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Bautista* class

members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petition for a writ of habeas corpus be denied and such other further relief that the Court deems just and proper.

Dated: Brooklyn, New York
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