UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Victor Hugo Pesantez Castro,

Petitioner,

-against-

Raul Maldonado Jr. Warden Metropolitan Detention Center, Brooklyn, NY
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-6844

(Azrack, J.)

RESPONDENTS' OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

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December 19, 2025

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PRELIMINARY STATEMENT

Respondents Metropolitan Detention Center, Brooklyn Warden Raul Maldonado, Jr.; United States Immigration and Customs Enforcement ("ICE") Acting Director Todd Lyons; Secretary of Homeland Security Kristi Noem; and Attorney General Pam Bondi (collectively, "Respondents"), by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Geoffrey Stannard, Assistant United States Attorney, of counsel, respectfully submit this memorandum of law in opposition to the Petition for a Writ of Habeas Corpus ("Petition") (ECF No. 1).

Petitioner Victor Hugo Pesantez Castro is an Ecuadoran national who surreptitiously entered the United States at the Mexican border, without inspection or admission, and was encountered by ICE in Corona, New York on November 19, 2025. Because he lacked valid entry documents, Petitioner was inadmissible under, *inter alia*, 8 U.S.C. § 1182(a)(6)(A)(i).

Petitioner was taken into ICE custody and issued a Notice to Appear ("NTA") charging him with removability 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 States at any time or place other than as designated by the Attorney General. Because Petitioner was subject to detention under 8 U.S.C. § 1225(b)(2)(A), he was transferred to the Metropolitan Detention Center, Brooklyn, where he will be detained during his removal proceedings.

Petitioner's removal proceedings remain pending before an immigration judge ("IJ") and petitioner intends to apply for asylum. If he is unsuccessful, he will have the opportunity for further process before the Board of Immigration Appeals ("BIA") and yet further process, if he is again unsuccessful, by appealing directly to the Second Circuit via a Petition for Review.

On December 12, 2025, Petitioner filed this habeas petition (the "Petition") alleging that his arrest and detention violated his procedural and substantive due process rights under the Fifth Amendment. He seeks, *inter alia*, an order enjoining Respondents from transferring Petitioner outside of this judicial district and a writ of habeas corpus directing Respondents to release him from custody.

Petitioner is not entitled to the relief that he seeks. First, Petitioner's claim that Respondents violated his procedural due process rights is without merit, because the process owed to Petitioner is set forth by Congress, and Petitioner has not identified any process which he is owed and has not received. Specifically, Petitioner's assertion that he is entitled to an individualized determination regarding his flight risk or danger to society is wrong, because Petitioner is not, and has never been, admitted to the United States. Detention appurtenant to removal proceedings for applicants for admission—a category in which Petitioner inarguably falls—is the process that Congress authorized for such individuals under 8 U.S.C. § 1225(b)(2)(A). Second, Petitioner's substantive due process challenge fails because Petitioner has not shown (as he must) that Respondents acted so egregiously as to shock the conscience.

Respondents are aware of the Temporary Restraining Orders this Court issued in *Montoya v. Bondi, et al.*, No. 25-cv-6363 and *Molina v. DeLeon, et al.*, No. 25-cv-6526, citing cases from this District in which Petitioners were found to be subject to discretionary detention rather than mandatory detention. As discussed in Part I.D *infra*, Respondents respectfully submit that those cases are distinguishable from this case.

As set forth below, the Court should deny the Petition.

RELEVANT STATUTORY AND REGULATORY FRAMEWORK

Prior to 1996, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.* 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," prior to 1996, 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.

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. INS*, 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. *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 (3d Cir. 2012)); *see Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-

469, pt. 1, at 225 (1996) ("House Rep.") ("[I]llegal 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.").[1]

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." Relatedly, Title 8 U.S.C. § 1225(a)(1), was added to the INA as part of the 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. Among other things, the 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). Further, the INA also now defines "admission" with a new modifier: as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added); *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,

[1] 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)

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)).

The INA today defines an "applicant for admission" as a term of art to include those who are *present* in the United States, but who have not been admitted. 8 U.S.C. § 1225(a)(1) ("[A]n alien present in the United States who has not been admitted . . . shall be deemed for purposed of this chapter an applicant for admission.").[2] Also, as noted above, the INA defines "admission" as the "lawful entry" of the alien after inspection by an immigration officer. 8 U.S.C. § 1101(a)(13)(A). Also important is that 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. The IIRIRA provided for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), 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

[2] 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).

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] of title 8 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

[3] Section 1225(b)(2)(A) 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).

§ 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) ("[P]arole of such alien shall not be regarded as an admission of the alien."); *accord* 8 U.S.C. § 1101(a)(13)(B); 8 C.F.R. § 1.2.

Subsection (c) of the next section of the same title, 8 U.S.C. § 1226(c), as amended by the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025), which also requires mandatory detention, lacks a humanitarian parole option. Another provision of 8 U.S.C. § 1226, § 1226(a)[4] provides an option for release on "bond" or "conditional parole," conditional parole under Section 1226(a), but that 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). Moreover, not even bond or conditional parole are 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] Congress expressly permitted release of those aliens only if DHS determines "that release of the alien from

[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). 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.

[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 aliens 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.*

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. 8 U.S.C. § 1226(c)(4); *see also Jennings*, 583 U.S. 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).

RELEVANT FACTS AND PROCEDURAL HISTORY

In August 2021, Petitioner unlawfully entered the United States by crossing the United States-Mexico border without documentation or inspection. *See* Pet. ¶ 1; Declaration of Michael Charles dated December 19, 2025 ("Charles Decl.") ¶ 3. On November 19, 2025, at approximately 6:00 a.m., ICE officers encountered Petitioner in Corona, New York while conducting a targeted enforcement action to arrest another alien. Charles Decl. ¶ 3. Prior to this encounter, Petitioner had never been encountered by ICE, U.S. Customs and Border Protection (CBP), or the U.S. Citizenship and Immigration Services (USCIS). *Id.* Petitioner claimed to be a native and citizen of Ecuador and admitted that he had illegally entered the United States at or near El Paso, Texas, on or about August 20, 2021. *Id.* ICE record checks in the field did not reveal any legal entry or legal immigration status for Petitioner. *Id.* Petitioner was arrested pursuant to an I-200 arrest warrant. *Id.* ICE's system checks during processing revealed that Petitioner did not have any applications

pending with USCIS, not least U nonimmigrant visa, T nonimmigrant visa, or Violence Against Women Act (VAWA) applications. *Id.*

During the same set of processing, ICE served Petitioner with a Notice to Appear ("NTA") (Form I-862), charging him as inadmissible pursuant to 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 States at a time or place other than as designated by the Attorney General. *Id.* The NTA directed Petitioner to appear before an immigration judge on December 17, 2025. *Id.* ICE also served Petitioner with a Notice of Rights and Request for Disposition; a Notice of Fee Assessment Under 8 U.S.C. § 1815; a notice of entitlement to notification of consular representatives; Form M-444, Information About Credible Fear Interview; "Important Information About Section 236(a) Initial Detention Decisions," and a list of pro bono legal service providers. *Id.* ICE afforded Petitioner the opportunity to make a telephone call, and he elected to call Andea Samantha Salina Penaran, whom he identified as his ex-wife. *Id.*

Later that same morning, at approximately 10:30 a.m., ICE determined that Petitioner was subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A). Accordingly, he was taken into custody at Metropolitan Detention Center, Brooklyn. *Id.* ¶ 4.

On November 25, 2025, Petitioner appeared with counsel before an immigration judge for a master calendar hearing, and the matter was adjourned at Petitioner's request to December 9, 2025 to afford counsel time to review the NTA with Petitioner. *Id.* ¶ 5. On December 5, 2025, Petitioner filed a motion for bond redetermination. *Id.* ¶ 6. On December 8, 2025, the immigration judge scheduled a hearing on Petitioner's motion for bond redetermination for December 12, 2025. *Id.* ¶ 7.

On December 9, 2025, Petitioner entered oral pleadings in which he admitted all the allegations contained in the NTA. *Id.* ¶ 8. Petitioner stated that he intended to seek asylum because of his fear of returning to Ecuador. *Id.* The immigration judge directed Petitioner to file his asylum petition by December 30, 2025. *Id.* Petitioner withdrew his pending bond redetermination motion and filed a new bond redetermination motion. *Id.* The immigration judge scheduled a hearing on the new bond redetermination motion for December 17, 2025. *Id.*

At no time has Petitioner been admitted to the United States, and he remains an applicant for admission. *Id.* ¶ 9. Although Petitioner claims he has been employed, *see* Pet. ¶ 21, he has never applied for or been issued a work authorization. Charles Decl. ¶ 10

ARGUMENT

I. PETITIONER FAILS TO STATE A CLAIM FOR VIOLATION OF PROCEDURAL DUE PROCESS

Petitioner's claim that his detention violates procedural due process, Petition, ¶¶ 51-54, whether pursuant to the Constitution's Fifth Amendment, or asserted through the APA, 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 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 *United States 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 *Department 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'

[6] It cannot be disputed that Petitioner has separately received substantial process before the immigration court in connection with his removal proceedings, including access to counsel and multiple hearings before an IJ. Charles Decl. ¶¶ 3-8.

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

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, *see* Charles Decl. ¶¶ 4-10, 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). 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) *notice of appeal filed Dec. 16, 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., Liang, Petitioner, v. Almodovar, et al.*, No. 25-cv-9322, 2025 WL 3641512, at *4 (S.D.N.Y. Dec. 15, 2025) (holding that petitioner who entered the United States without being admitted was properly subject to detention under the plain language of Section 1225, notwithstanding prior release on his own recognizance under Section 1226, and further concluding that petitioner was not entitled to any process beyond that set forth in the statute); *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") *notice of appeal filed Dec. 16, 2025*; *Duenas Garcia v. ICE*, No. 25-cv-1004, 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-1695, 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*, No. 25-cv-04830, 2025 WL 3171331, at *4 (S.D. Tex. Nov. 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, 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"); *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"). *Rojas v. Olsen*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wisc. 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). 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. Congress made the fact

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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). *Jennings* does not suggest 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. Further, hen 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. Respondents' 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 *were* at one time admitted into the United States but are now removable.

In sum, the Supreme Court in *Jennings* 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 resolving the scope of Sections 1225(b) and 1226.

that "applicant for admission" is a subset of those who are "seeking admission" in section 1225(a)(3), which provides that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or 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. 1:25-cv-00168, 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"—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 an 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.

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*, --- F.Supp.3d ---, 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 U.S.C. § 1225, and he is ineligible for bond as he is not being detained under 8 U.S.C. § 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. Cases Holding Otherwise Are Inapposite Or Wrongly Decided

The United States recognizes that, while there have been favorable decisions, including within 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 be § 1226. Respondents

respectfully disagree with the § 1225(b)(2)(A) reading in these cases.

For instance, in *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025), to which Petitioner cites, *see* Petition, ¶ 35, 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, the INA 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 Trust, 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) (Donnelly, J.); *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, --- F.

Supp. 3d ---, 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 incorrectly 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 Chen,* 2025 WL 3484855, at *4-5 (the holdings of district courts in this Circuit that 1225(b) mandatory detention does not apply to aliens who are not seeking admission "fl[y] in the face of defined statutory text"); *Chavez*, 2025 WL 2730228, at *4 (aliens who were present in the United States and have not been admitted are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *accord Alonzo v. Noem*, --- F. Supp. 3d ---, 2025 WL 3208284, at *4 (E.D. Cal. Nov. 17, 2025); *Olaide v. Noem*, No. 25-cv-0168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Moreover, these cases do not grapple

[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 U.S.C. § 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.

with the fact that 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" by their own logic, restrict mandatory detention in section 1225 to those actively -- *i.e.*, those engaged in some active effort to gain admission. *See, e.g.*, *Rodriguez-Acurio*, --- F. Supp. 3d ---, 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 changes enacted by IIRIRA the removed the different treatment to those sneaking and presenting themselves at the border, and focused only on *lawful* entry, and 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*, --- F. Supp. 3d ---, 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]

In sum, the plain language and legislative history of the relevant statutes support the

[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 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].").

conclusion that aliens such as Petitioner are subject to mandatory detention under § 1225.

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 (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) ("[I]t 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.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus and grant such other further relief that the Court deems just and proper.

Dated: Brooklyn, New York
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