U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

March 12, 2026

BY ECF
Honorable Diane Gujarati
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Caballero-Gomez v. Genalo, et al.*, No. 26-cv-1328 (Gujarati, J.)

Dear Judge Gujarati:

This Office represents the Respondents in this habeas action, in which Petitioner Jeffry Davidson Caballero-Gomez challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1. Respondents write respectfully in response to the Court's Order to Show Cause ("OTSC") directing Respondents to show cause in writing why a writ of habeas corpus should not issue and to "file (under seal if necessary) any documents from Petitioner's immigration file relevant to the issues raised in the Petition." *See* Mar. 10, 2026 Order.

A. Relevant Facts

Petitioner is a native and citizen of Honduras. Pet. ¶ 1. On December 24, 2025, ICE officers encountered Petitioner while conducting field surveillance operations in Queens, New York. Declaration of Imani J. Montgomery ("Montgomery Decl.") ¶ 3. After identifying themselves as ICE officers, the officers engaged in a consensual field interview with Petitioner to gain information about another target. *Id.* During the interview, Petitioner freely admitted that he is a native and citizen of Honduras and that he entered the United States illegally by crossing the United States-Mexico border. *Id.* Record checks in the field revealed that Petitioner entered the United States without inspection and did not have valid immigration documentation authorizing his presence in the United States. *Id.* The officers advised Petitioner that he would be taken into ICE custody pursuant to a Form I-200, Warrant for Arrest of Alien ("Form I-200"). *Id.* ¶ 4. Petitioner fled on foot, and the officers apprehended Petitioner after a brief foot pursuit. *Id.* The officers arrested Petitioner pursuant to a Form I-200, detained him pursuant to Immigration and Nationality Act ("INA") § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and transported him to 26 Federal Plaza in Manhattan for processing. *Id.*

On December 25, 2025, ICE served Petitioner with a Form I-862, Notice to Appear ("NTA"), charging him as inadmissible under INA section 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.* ¶ 5. The NTA directed Petitioner to appear before an immigration judge on January 5, 2026 to show why he should not be removed from the United States. *Id.* DHS served the NTA

on the New York City Varick Street Immigration Court, commencing removal proceedings. *Id.* Petitioner was transferred to Orange County Jail in Goshen, New York that same day. *Id.*

On December 29, 2025, Petitioner was transferred to Metropolitan Detention Center ("MDC") in Brooklyn, New York, where he remains detained at MDC pursuant to INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 6.

On December 31, 2025, Petitioner appeared for an initial master calendar in immigration court. *Id.* ¶ 7. The hearing was reset for January 7, 2026 to afford Petitioner the opportunity to retain counsel. *Id.* On January 7, 2026, Petitioner appeared with counsel for a master calendar hearing. *Id.* ¶ 8. The hearing was reset for January 14, 2026 to afford time for attorney preparation. *Id.* On January 14, 2026, Petitioner, through counsel, submitted written pleadings conceding proper service of the NTA, admitting all factual allegations in the NTA, and conceding removability as charged. *Id.* ¶ 9. Petitioner applied for relief from removal by filing Form EOIR-42B, Cancellation of Removal. *Id.* An individual merits hearing is currently scheduled for April 8, 2026. *Id.*

B. Habeas Petition

Petitioner commenced this action on March 6, 2026. ECF No. 1 ("Pet."). He argues that 8 U.S.C. § 1225(b) does not apply to him and that he is instead detained under 8 U.S.C. § 1226 and must be afforded a bond hearing. *See generally* Pet. Petitioner asserts claims pursuant to 28 U.S.C. § 2241 and the Due Process Clause of the Fifth Amendment. Petitioner asks the Court to, *inter alia*, issue a writ of habeas corpus ordering Respondents to immediately release him from custody. Pet. at 12.

C. The Court's Decision in *Diallo*

On November 12, 2025, this Court issued a decision in *Diallo v. Maldonado*, a habeas case challenging whether an alien who was never lawfully admitted, but who had previously been released from custody and was present in the country, is subject to mandatory detention under § 1225, or instead subject to detention under § 1226(a), which permits bond. *Diallo v. Maldonado*, No. 25-cv-5740, 2025 WL 3158295, at *1 (E.D.N.Y. Nov. 12, 2025). The Court concluded that it need not resolve the statutory interpretation question of whether § 1225 or § 1226(a) applied because, even assuming that § 1225 applied, the petitioner's detention violated the Due Process clause. *Id.* at *3. In particular, the Court noted that Diallo had previously been released from custody after he was initially apprehended in December 2023 and, based on the fact of that release, concluded that release would have to have been parole under 8 U.S.C. § 1182(d)(5)(A) because that is the sole statutory authority under which an alien subject to Section 1225 may be released. *Id.* at *4-5 (citing *Savane v. Francis*, No. 25- 06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.)).[1] The Court further concluded that termination of parole requires written notice to the alien and an individualized assessment as to whether parole should be terminated. *Id.* (citing 8 C.F.R. 212.5(e)(2)(i) and *Savane*, 2025 WL 2774452, at *8). The Court concluded that, because

[1] Respondents respectfully note that, since *Diallo*, the Honorable Gregory H. Woods, on whose decision in *Savane* the *Diallo* decision relies, found that 1225(b)(2)(A) does apply to instances such as this where, as here, the alien has never been admitted, regardless of whether he has been physically since been present in the United States. *Arana v. Arteta*, No. 26-cv-240, 2026 WL 279786, at *1 (S.D.N.Y. Feb. 3, 2026) (Woods, J.).

those procedures were not provided, Diallo's detention violated his procedural due process rights and granted the petition. *Id.* at *5.

D. Discussion

Petitioner's detention under § 1225 is lawful, and Petitioner's arguments to the contrary, including based on his physical presence in the interior of the United States, are unavailing, as set forth below. Since *Diallo*, the Fifth Circuit, the Honorable Brian M. Cogan, and multiple Southern District of New York courts have recognized that 1225(b)(2)(A) requires detention without access to a bond hearing for all applicants for admission, including those encountered in the interior of the country. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 166 F. 4th 494 (5th Cir. 2026); *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574, at *2-3 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.), *appeal filed*; *Changgeng Chen v. Almodovar, et al.*, No. 25-cv-9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Alvarado Quezada v. Francis*, No. 26-cv-387, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26-cv-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Acosta v. Arteta*, No. 25-cv-9916, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Espinoza Lopez v. Noem*, No. 26-cv-345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Perez Quintero, v. Francis*, No. 25-cv-10107, 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Weng v. Genalo*, No. 25-cv-09595, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512 (S.D.N.Y. Dec.15, 2025) (Vyskocil, J.), *appeal filed*; *Chen v. Almodovar*, No. 25-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *appeal filed*.[2]

i. The Text of Section 1225 Contains No Geographic Limitation and Covers Aliens Not Admitted and Yet "Present in the United States"

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 made numerous changes to the text of the INA. Specifically, as codified at 8 U.S.C. § 1225(a), Congress eliminated a prior distinction between presence and entry, and instead promulgated 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). Further, Congress defined "admission" with a new modifier: "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). Thus, whereas previously the INA had separated aliens who had "enter[ed]" from aliens who were being inspected at a port of entry, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," all "aliens who have not yet entered" with "aliens who are already present in the United States but did not enter lawfully." *See Xiaoquan Chen v.*

[2] Respondents acknowledge that a larger number of non-binding court decisions across the country have rejected Respondents' statutory construction. However, as recently explained by the Hon. John L. Sinatra, Jr., W.D.N.Y., "[t]he fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." *Candido v. Bondi, et al.*, 25-cv-867, 2025 WL 3484932 at *2 (Dec. 4, 2025). Respondents respectfully note that the government has affirmatively appealed the grant of a habeas petition in *Cunha v. Moniz*, 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that § 1226(a), not § 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141. Briefing was completed on March 3, 2026 and oral argument has been scheduled for April 6, 2026.

Almodovar, et al., No. 25-cv-8350, -- F. Supp. 3d --, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) ("*Xiaoquan Chen*"), *appeal filed*, 25-3169.

Also codified at § 1225(a)(3), Congress defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission . . . shall be inspected by immigration officers"). (emphasis added).

The statute here makes no exception for the duration of an alien's presence in the country or the distance of an alien's incursion into the country. Congress knows how to limit the scope of a statute when it wants to. For example, § 1225(b)(1)(A)(iii) is limited to an alien who cannot show that he has been physically present in the United States "continuously for the 2-year period immediately prior." There is no such limitation on § 1225(b)(2)(A) detentions. Section 1225, instead, requires mandatory detention of applicants for admission who are not clearly and beyond a doubt entitled to admission, regardless of how long an alien has been unlawfully present in the United States or how far the alien is from the border. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225 places under its ambit those present and not admitted, and such text is where this Court's "analysis" should "begin[] and end[]." *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020).

Here, Petitioner falls squarely within the statutory definition. Petitioner was "present in the United States" when he was arrested and has "not been admitted." Further, Petitioner, who is in removal proceedings, has not established that he is "clearly and beyond a doubt entitled to be admitted." Petitioner "shall," therefore, "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

Multiple courts, including the first (and thus far only) U.S. appellate court to rule on the merits of the statutory interpretation question and several district courts in this Circuit, have endorsed this plain application of the statutory text. The Fifth Circuit confirmed Respondents' reading that § 1225(b)(2)(A) covers applicants for admission, like Petitioner, regardless of where or how they entered the country. *See Buenrostro-Mendez*, 166 F.4th at 499. As it held, an alien is an applicant for admission "whether or not [they arrived] at a designated port of arrival" and regardless of "where or how the alien entered the United States." *Id.* at *2. For such aliens not otherwise covered by § 1225(b)(1), § 1225(b)(2)(A) requires detention. *Id.*

Several courts, including courts in this District and Circuit, agree. For example, in *Saamishvili*,[3] the Honorable Brian M. Cogan denied the habeas petition of an alien present in the United States without being admitted who was detained under § 1225(b)(2)(A), holding that under the "natural reading" of the statutes, and "consistent with IIRIRA's purpose," § 1225(b)(2)(A) "applies to all aliens who entered the United States without inspection." *See Saamishvili*, 2026 WL 377574, at *2-3. As Judge Cogan recognized, "applicants for admission" include "'both aliens arriving at the border and aliens already present in the United States without inspection.'" *See id.* at *2 (quoting *Cruz-Miguel v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011)). Such aliens "must be inspected by immigration officers to determine their admissibility" under 8 § 1225(a)(3). *See id.*

[3] The Petitioners in *Saamishvili*, *Xiaoquan Chen* and *Candido* have appealed to the Second Circuit. *See Saamishvili v. Flanagan*, No. 26-00354 (2d Cir.); *Xiaoquan Chen v. Almodovar*, No. 25-3169 (2d Cir.); *Candido v. Bondi*, No. 25-3159 (2d Cir.).

(quoting *Cruz-Miguel*, 650 F.3d at 197 (citing 8 U.S.C. § 1225(a)(3)). And when inspected, "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." 8 U.S.C. § 1225(b)(2)(A). That is the outcome, Judge Cogan held, regardless of where the alien is encountered or how long he has been here, as he "continues to be[] subject to the mandatory detention requirement of Section 1225(b)(2)(A)" "[s]ince his unlawful entry." *See id.* at *2-3.

Likewise, in *Yinxiao Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) ("*Yinxiao Chen*"), the Honorable John P. Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival ...).'" *See id.* at *8 (emphasis in *Yinxiao Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together, Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*

Judge Cronan concluded that other district courts erred in holding that the § 1225(b)(2)(A) detention authority covers only the purported subset of applicants for admission who are "seeking admission" through affirmative steps towards lawful admission. *See Yinxiao Chen*, 2026 WL 100761, at *8-10. As Judge Cronan held, aliens "seeking admission" are not a subset of "applicants for admission" but rather the opposite is true: "Section 1225 itself expressly treats applicants for admission as among those seeking admission." *See id.* at *9 (citing § 1225(a)(3), (5)). Judge Cronan concluded that such other district court holdings "introduce[] more questions to the statute than answers." *Yinxiao Chen*, 2026 WL 100761, at *9. "The answer," Judge Cronan determined, "is the one that Congress has already provided throughout Section 1225: an applicant for admission is 'seeking admission,' even when that noncitizen is 'present in the United States' without having 'been admitted.'" *Id.*

Similarly, in *Xiaoquan Chen*, 2025 WL 3484855, the petitioner had entered the United States without having been admitted, was released, and remained in the country unlawfully for two years until he was recently detained pursuant to § 1225(b)(2)(A). 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. *Xiaoquan Chen*, 2025 WL 3484855 at *4. Judge Vyskocil 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; *see also Liang*, 2025 WL 3641512 (denying petition on substantially similar grounds as in *Chen*, 2025 WL 3484855); *Candido*, 2025 WL 3484832, at *2-3 (finding § 1225(b)(2)(A) detention 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"); *accord Arana*, 2026 WL 279786, at *3-5 (explaining that the court "finds persuasive the cogent interpretation of the INA's grants of detention authority articulated by Judge Vyskocil in [*Xiaoquan Chen*]").

At bottom, the decisions holding § 1226(a) applicable to an alien present inside the United States prior to their detention have not addressed a critical issue: "How does a court determine

when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya v. Holt, et al.*, No. 25-cv-1231, 2025 WL 3733302, at *2 (W.D. Okla. Dec. 26, 2025). *Montoya* elaborated:

> Is two years of unadmitted residence long enough? Three? How far must an alien travel from the border? 50 miles? 100? If an alien has been in the interior a short time but resides far away from the border, can the distance make up for a short duration? Or, if an alien lives close to the border but resides in the country for decades, can the time period make up for the short distance?

Id. 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." *Xiaoquan Chen*, 2025 WL 3484855, at *5 (finding that the concerns and arguments about surplusage are misplaced). It is Congress that has delineated when an alien "seeking admission" is, and is not, an "applicant for admission." *See* 8 U.S.C. § 1225(a)(1), a(3). Petitioner has not been admitted, and he is therefore an applicant for admission. Because he is in removal proceedings, 8 U.S.C. § 1225(b)(2)(A) requires his detention.

ii. Imposing a Geographic Limitation Into § 1225(b)(2)(A) Subverts the INA Amendments

An interpretation that applies § 1225(b)(2)(A) only at or near the border, and which concludes that it cannot apply to those who are present in the country unlawfully without those temporal and geographic limitations, subverts Congress's elimination in IIRIRA of preferential treatment for aliens who unlawfully enter the country. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the [applicable a]ct to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

Before 1996, aliens who attempted to enter the United States by presenting for inspection at a port of entry received less process and were subject to more restrictions than aliens who entered surreptitiously by crossing the border unlawfully. Specifically, under the pre-1996 procedures, aliens at a port of entry who could not demonstrate entitlement to admission were placed in "exclusion proceedings" and were subject to mandatory detention without the possibility of bond. *See* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). In contrast, an alien who evaded inspection and physically entered the United States was placed in "deportation" proceedings and taken into custody under an arrest warrant but could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hing Sum*, 602 F.3d at 1100. Thus, whether an alien had physically entered the United States or not—defined at that time as "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994)—"dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099. IIRIRA removed the exclusion-deportation distinction to ensure that an alien who enters unlawfully and evades apprehension for a long period of time is not in a more favorable position than an alien who enters unlawfully but is apprehended immediately. *Saamishvili*, 2026 WL 377574, at *2.

Petitioner's statutory interpretation would restore the regime Congress sought to eliminate: it would require detention for those who present themselves for inspection at the border, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades. That is exactly the "perverse incentive to enter" unlawfully that IIRIRA sought to eradicate. *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). Such a rule "flies in the face of Congress' decision, codified in the IIRIRA, to change the immigration system that had turned on whether 'an alien [was] already here,' and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry." *Xiaoquan Chen*, 2025 WL 3484855, at *5 (emphasis in *Xiaoquan Chen*) (quoting *Judulang v. Holder*, 565 U.S. 42, 45, 132 S. Ct. 476, 479 (2011)). "By ruling that "seeking admission" is an additional requirement for mandatory detention, judges [who do not accept the government's position] establish a perverse system in which an alien becomes subject to harsher treatment only upon actively seeking "lawful" status. *Id.*

iii. Supreme Court Precedent Supports Respondents' Interpretation of § 1225

Recent Supreme Court precedent supports Respondents' position. *See, e.g.*, *Thuraissigiam*, 591 U.S. at 103; *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Thuraissigiam*, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry." 591 U.S. at 139-40. Aliens like Petitioner who are permitted entry into the United States pending their removal are 'treated' for due process purposes '*as if stopped at the border.*'" *Thuraissigiam*, 591 U.S. at 139 (emphasis added). Under this precedent, Petitioner's physical presence in the country is irrelevant, and he should be treated as if stopped at the border and subject to § 1225 mandatory detention.

Even more significantly, the Supreme Court in *Jennings* defined "applicant for admission" in a manner consistent with Respondents' position: "an alien who 'arrives in the United States,' or '*is present' in this country but 'has not been admitted', is treated as 'an applicant for admission.*'" *Jennings*, 583 U.S. at 287 (emphasis added). And, consistent with Respondents' reading, the Supreme Court recognized 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; *see also Saamishvili*, 2026 WL 377574, *3. Nothing in *Jennings* displaces the statute's plain text and the manifest congressional purpose.

iv. DHS Cannot Be Equitably Estopped from Enforcing the INA

To the extent Petitioner intends to argue that Respondents should be estopped from detaining him now, because ICE did not detain him earlier and/or because his Form I-200, Warrant for Arrest of Alien, reflects that Petitioner would be detained pursuant to the authority contained in "Section 236" of the INA, he is wrong. "[I]t is well settled that the Government may not be estopped on the same terms as any other litigant." *Heckler v. Cmty. Health Servs. Of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). The Second Circuit has held that the doctrine of equitable estoppel is applied against the Government only "'in the most serious of circumstances' . . . and is applied 'with the utmost caution and restraint.'" *Rojas-Hayes v. INS*, 235 F.3d 115, 126 (2d Cir. 2000) (quotations omitted). To apply estoppel, there must be a showing of "affirmative misconduct" by the Government, as well as reasonable and detrimental reliance. *City of New York v. Shalala*, 34 F.3d 1161, 1168 (2d Cir. 1994). In particular, a party must establish "*both* that the

Government made a misrepresentation upon which the party reasonably and detrimentally relied *and* that the Government engaged in affirmative misconduct.'" *See Coppola v. United States*, 938 F. Supp. 204, 208 (S.D.N.Y. 1996) (citing *Shalala*, 34 F.3d at 1168). Mere negligence is insufficient to show affirmative misconduct. *Ahmed v. Holder*, 624 F.3d 150, 155 (2d Cir. 2010).

Petitioner cannot demonstrate "affirmative misconduct." *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 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").[4] The Court should hold the same here. Thus, Petitioner here cannot rely on equitable estoppel to dispute his detention pursuant to § 1225(b).

v. Petitioner's Detention Comports With Due Process

Petitioner's claims fail because for applicants for admission, receiving statutory process suffices for due process. To state a claim for procedural due process, Petitioner 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.

[4] 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).

Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (process owed is flexible and case-specific).

Because Petitioner is deemed an applicant for admission and thus treated for constitutional purposes as if stopped at the border, he is lawfully detained pursuant to § 1225(b), and neither his procedural nor substantive due process rights have been violated. First, with respect to his procedural due process rights, the Supreme Court has made clear that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing did not violate due process. *Mezei*, 345 U.S. at 206. "[A]n alien on the threshold of initial entry stands on a different footing." *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* (quoting *Knauff*, 338 U.S. at 544). 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 process Congress set forth in the INA, for such aliens. *Id.*

Here, the process due to Petitioner, who was not yet admitted, is the process that is set forth by Congress in 8 U.S.C. s 1225(b), and "because the immigration statutes at issue [ ] do not authorize a bond hearing, *Mezei* dictates that due process does not require one." *Poonjani*, 319 F. Supp. 3d at 649. In a case decided after *Jennings* involving an applicant for admission who was detained under Section 1225(b)(1)(B)(ii), the court held that "because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." *Poonjani*, 319 F. Supp. 3d at 649.[5]

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[5] To the extent Petitioner purports to assert a substantive due process claim (which the Petition does not expressly assert) that claim would fail. A substantive due process claim must allege 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). 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).

No court has ever held that an alien not lawfully admitted to the United States—like Petitioner—holds a fundamental right to remain at liberty in the United States. To the contrary, "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"). That is because "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). Removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235

E. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition. Respondents thank the Court for its time and consideration in this matter.

Respectfully submitted,

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(1896)); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure.").

Here, because Petitioner's detention for the duration of his removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A), the fact that ICE has followed the INA process to the letter does not "shock the conscience." Petitioner is not entitled to release or more process. *Mezei*, 345 U.S.at 212.