UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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F.A.R.,

Petitioner,

- against -

KENNETH GENALO, in his official capacity as Field Office Director of New York, Immigration and Customs Enforcement;
RAUL MALDONADO Jr., in his official capacity as Warden of the Metropolitan Detention Center;
TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAM BONDI, in her official capacity as Attorney General,

Respondents.

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Civil Action No. 26-CV-1663

(Cogan, J.)

**MEMORANDUM OF LAW IN RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT BE ISSUED**

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## PRELIMINARY STATEMENT

Respondents, by their attorneys Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Dara A. Olds, Assistant United States Attorney, of counsel, respectfully submit this return to the Petition for a Writ of Habeas Corpus and in response to this Court's Order to Show Cause, dated March 20, 2026.

Petitioner F.A.R. [1] is a Honduran national who surreptitiously entered the United States at the Mexican border, without inspection and admission and was encountered near Brownsville Texas in 2013. Because he lacked valid entry documents, Petitioner was inadmissible under, *inter alia*, 8 U.S.C. § 1182(a)(6)(A)(i). On the same date, Department of Homeland Security ("DHS") component U.S. Customs and Border Protection ("CBP") issued a Notice to Appear, placing him in removal proceedings. CBP also determined that Petitioner was 17 years old, and performed an Unaccompanied Alien Children ("UAC") screening, consistent with the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 22 U.S.C. § 7101 *et seq.*, and transferred him to the custody of the Department of Health and Human Services ("HHS") Office of Refugee Resettlement ("ORR"), as the statue requires. He was never transferred back from ORR to the custody of DHS. Rather, a few weeks later, and while he was still a minor, ORR released Petitioner to the custody of a family member. Approximately one year later, he moved to New York in 2014 to live with an aunt. He turned 18 later the same year. DHS did not detain him again until a decade later after he reached his majority.

On June 26, 2022, while he removal proceedings were still pending, Petitioner was arrested by the New York State Police for, *inter alia*, aggravated driving while intoxicated with a child-passenger less than 16 years old. He pleaded guilty the following month and was

[1] Petitioner has requested leave to proceed under a pseudonym. ECF No. 2. Respondents take no position on Petitioner's request.

sentenced to three years of probation, license revocation, and a $500.00 fine. On August 28, 2025, while appearing at a probation appointment, Immigration and Customs Enforcement ("ICE") agents arrested and detained Petitioner as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A)).

Petitioner filed this habeas petition to challenge his detention, claiming it violated his due process rights under the Fifth Amendment and the TVPRA, as well as the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-06. He seeks release from detention, or in the alternative, an order requiring DHS to perform a least restrictive setting analysis, or in the further alternative, an order requiring a bond hearing before a "neutral decisionmaker." He contends that, although he has never been admitted to the United States, he is entitled to discretionary detention and bond hearings under 8 U.S.C. § 1226(a) instead of mandatory detention as required under § 1225(b)(2)(A) for non-admitted aliens in removal proceedings.

Petitioner is not entitled to the relief he seeks. In *Saamishvili v. Flanagan*, this Court denied a habeas petition from an ICE detainee held under 8 U.S.C. § 1225(b)(2)(A), noting that when the alien "first crossed the [U.S.] border, he was certainly an applicant for admission" and "[s]ince his unlawful entry, petitioner has been, and continues to be, subject to the mandatory detention requirement." 25-cv-6178 (BMC), 2026 WL 377574, *2, 3 (E.D.N.Y. Feb. 11, 2026). Other judges within this Circuit have similarly so held, as has both circuits to rule so far on this issue, the Fifth Circuit and the Eighth Circuit Courts of Appeals.[2] The Court should reach the

[2]*See, e.g.*, *Avila v. Bondi*, -- F.4th --, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Palma v. Arteta*, 2026 WL 697015 (S.D.N.Y. Mar. 13, 2026) (Cronan, J.); *Velasquez v. Noem*, 2026 WL 621690 (S.D.N.Y. Mar. 5, 2026) (Woods, J.); *Chen v. Almodovar*, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Flores Pacheco v. Almodovar*, 2026 WL 366994 (S.D.N.Y. Feb. 10, 2026) (Cronan, J.); *Alvarado Quezada v. Francis*, No. 26-387, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Acosta v. Arteta*, No. 25-9916, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Espinoza Lopez v. Noem*, No. 26-345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Perez Quintero, v. Francis*, No. 25-10107, 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Gudino v. Almodovar*, 2026 WL 251887 (S.D.N.Y. Jan. 30, 2026) (Vyskocil, J.); *Weng v.*

same conclusion here.

*First*, Petitioner's detention under the Immigration and Nationality Act was proper. He has never been admitted, is in removal proceedings, and falls within the ambit of the mandatory detention requirements of 8 U.S.C. § 1225(b)(2)(A). *Second*, Petitioner's claim that Respondents violated his procedural due process fails because the process due to applicants for admission is the process that Congress set forth under 8 U.S.C. § 1225(b)(2)(A). Petitioner's substantive due process challenge fails, because ICE followed the statute, which cannot shock the conscience. *Third*, DHS abided by the TVPRA provisions inasmuch as 8 U.S.C. § 1232(c)(2)(B) is triggered by being transferred from HHS to DHS custody when turning 18, and he was not transferred to the custody of DHS when he turned 18. *Fourth*, Petitioner's APA claim is not cognizable.

## RELEVANT STATUTORY AND REGULATORY FRAMEWORK

### I. Relevant Authority as to Applicants for Admission

For more than a century, Congress has authorized immigration officials to arrest and detain certain aliens subject to removal until their removal proceedings conclude with admission or removal. *See Abdel v. United States*, 362 U.S. 217, 233-34 (1960). Over time, the aliens those laws cover, the scope of the authority to detain, and the avenues for release have evolved. But it has remained true that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process" because "deportation proceedings would be vain if those accused could not be held in custody pending the inquiry." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020).

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*Genalo*, No. 25-09595, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25-9322, 2025 WL 3641512 (S.D.N.Y. Dec.15, 2025) (Vyskocil, J.), *on appeal; Chen v. Almodovar*, No. 25-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *on appeal*.

**A. Before 1996, Aliens Who Surreptitiously Entered The Country Had More Rights And Protections Than Aliens Who Presented At A Port Of Entry**

Before 1996, under the INA, 8 U.S.C. § 1101 *et. seq.*, 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. *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010); *Saamishvili,* 2026 WL 377574, at *1-2; *Buenrostro*, 166 F.4th at 498, 508; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025)[3]; *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995). In contrast, aliens who entered the United States surreptitiously were placed in "deportation" proceedings and taken into custody but could request release on 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. *Buenrostro*, 166 F.4th at 498, 508.

The pre-1996 INA framework, however, had "unintended and undesirable consequence[s]." *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). "[A]liens 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.

[3] A district judge in the Central District of California recently purported to vacate the BIA's statutory construction in *Hurtado* as to §§ 1225(b)(2)(A) and 1226(a). *See Maldonado Bautista*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). The Government sought a stay pending appeal. *See Maldonao Bautista v. Santacruz, et al.*, No. 26-1004, Dkt. No. 3.1 (9th Cir. Feb. 26, 2026). On March 6, 2026, the Ninth Circuit granted a temporary administrative stay of the vacatur and also of the *Maldonado Bautista* declaratory judgment "insofar as the district court's judgment extends beyond the Central District of California," pending adjudication of the motion to stay pending appeal. *Id.*, Dkt. No. 5.1, at 1. A petition for re-hearing *en banc* has been filed. To the extent Respondents cite *Hurtado* here, it is to provide a helpful summary of past practices. Respondents' statutory construction is consistent with *but* independent of *Hurtado*.

& N. Dec. at 223; *Saamishvili,* 2026 WL 377574, at *1-2; *Buenrostro*, 166 F.4th at 498, 508.

**B. Congress Eliminates Preferential Treatment For Aliens Who Unlawfully Entered And Mandates Detention Of All "Applicants For Admission"**

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), that dispensed with the earlier dichotomy. Congress declared "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)(1) (emphasis added). Congress also defined "admission" by adding a new modifier to entry: "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 the INA had previously separated aliens who had "enter[ed]" unlawfully from aliens who were being inspected at a port of entry but found inadmissible, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," including aliens who are already present in the United States but did not enter lawfully." *Chen*, 2025 WL 3484855, at *3. This new categorization "ensur[ed] 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); *accord Saamishvili,* 2026 WL 377574, at *2 ("Post-IRRIRA, 'both aliens arriving at the border and aliens present in the United States without inspection are deemed 'applicants for admission'… who must be 'inspected by immigration officers' to determine their admissibility") (citing *Cruz-Miguel v. Holder,* 650 F.3d 189, 197 (2d Cir. 2011)); *Buenrostro*, 166 F.4th at 499, 508 ("It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants").

The INA now defines "applicants for admission" not only as "an alien present in the

United States who has not been admitted," 8 U.S.C. § 1225(a)(1), but also 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); *Chen*, 2026 WL 100761. These applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). If applicants for admission are not deemed admissible upon such inspection, they then fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," with detention mandated for both. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies only to applicants for admission who are "arriving in the United States" or have "not been admitted or paroled into the United States," and also, among other aliens, those who 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, IIRIRA created expedited removal proceedings and required detention during such proceedings. *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020); 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(B)(iii)(IV); C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii).

Section 1225(b)(2) is a "catchall" covering "all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. For them, § 1225(b)(2)(A) requires detention, as well:

> 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 [8 U.S.C. §] 1229a.

8 U.S.C. § 1225(b)(2)(A)[4]; 8 C.F.R. § 235.3(b)(1)(ii); *Jennings*, 583 U.S. at 302 (§ 1225(b)(2)

[4] Section 1225(b)(2)(A) does not apply to crewmen or stowaways. 8 U.S.C. § 1225(b)(2)(B).

"mandate[s] detention of aliens throughout the completion of applicable proceedings"); *Chen*, 2025 WL3484855, at *3 (§ 1225(b)(2)(A) detention is "mandatory").

In sum, § 1225(b)(1) and (2) "unequivocally mandate that aliens falling within their scope 'shall' be detained," and such "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum . . . or until removal proceedings have concluded." *Jennings*, 583 U.S. at 299-300. Neither provide for a bond hearing.[5]

A neighboring statute, 8 U.S.C. § 1226(c), also provides for mandatory detention during removal proceedings for certain aliens and lacks this humanitarian parole option. Specifically, 8 U.S.C. § 1226(c), as amended by the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025), covers aliens with various types of criminal history. *Jennings,* at 287-89. For them, Congress permitted release only if the Department of Homeland Security ("DHS") determines it "is necessary" to protect certain witnesses to criminal activity and if the alien "will not pose a danger" to public safety and is not a flight risk. 8 U.S.C. § 1226(c)(4); *Jennings*, 583 U.S. at 289. (quoting then-8 U.S.C. § 1226(c)(2), now codified at (c)(4)). To § 1226(c), the LRA added § 1226(c)(1)(E)(i) and (ii), and (c)(2) and (3). Under the LRA, an alien who is inadmissible under 8 U.S.C. §§ 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 parole under § 1182(d)(5) and may only be released for the same limited set of reasons in § 1226(c)(4).

## II. Relevant Authority as to Unaccompanied Alien Children

### A. The Homeland Security Act of 2002

The Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135,

[5] The only alternative to detention under either 1225(b)(1) or (2) provision is discretionary parole under 8 U.S.C. § 1182(d)(5)(A). *Id.* at 288.

created DHS and transferred most immigration functions formerly performed by the Immigration and Naturalization Service to the newly-formed DHS and its components, including CBP, United States Citizenship and Immigration Services ("USCIS") and ICE. *See also* DHS Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (also set forth as a note to 6 U.S.C. § 542). Congress separately transferred to a component of HHS, the Office of Refugee Resettlement ("ORR"), the responsibility for caring for unaccompanied alien children ("UAC") "who are in Federal custody by reason of their immigration status." HSA, § 462(a)(b)(1)(A), codified as amended at 6 U.S.C. § 279(b)(1)(A) (2002). Congress gave ORR the initial responsibility of caring for any UAC. Congress did not preclude UACs from being placed into removal proceedings. *See* 8 U.S.C. § 1232(a)(5)(D).

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

**B. Trafficking Victims Protection Reauthorization Act of 2008**

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

that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3). Thus, the combination of the HSA and the TVPRA requires that UACs in DHS custody be transferred to HHS which provides for UACs in its care while they are in its custody.

However, HHS does not retain custody of UACs until they turn 18. The TVPRA requires that UACs in HHS custody be "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). It delegates to the Secretary of HHS the authority to make such placement decisions. *Id.* A UAC may be placed in a "secure facility" within ORR or if available in the care of a "suitable family member." *See id.* The latter placement divests HHS of custody of the child. Indeed, the regulations implementing this statutory directive specifically state that once ORR releases a UAC to a "vetted and approved" sponsor, the UAC is "release[d] . . . from ORR custody." *See* 45 C.F.R. § 410.1200.

While 8 U.S.C. § 1232(c)(2)(B) provides a consideration of the least restrictive setting for a UAC — that is, "an unaccompanied alien child *in the custody of [HHS]*," 8 U.S.C. § 1232(c)(2)(A) — who "reaches 18 years of age *and is transferred to the custody of the Secretary of [DHS]*" (emphasis added), by its plain terms, this statute only applies to aliens who reach 18 *while in the custody of* HHS, *who are transferred* to DHS. There is no provision that requires consideration of the least restrictive setting for an alien who was no longer in HHS custody at the time he turned 18, and was not transferred to DHS at that time. Nothing in 8 U.S.C. § 1232 suggests that when ORR takes an unaccompanied child into custody or releases him from custody, he ceases to be an "applicant for admission."

## III. Petitioner's Relevant Immigration and Detention History

*Petitioner Enters the U.S. Without Authorization and Is Detained by HHS*

Petitioner is a Honduran national. Petition, ¶ 12; Declaration of Cyrstal Harris dated March 25, 2026 ("Harris Decl."), submitted herewith, ¶ 1. Petitioner entered the United States in October 2013, by crossing the border between Mexico and the United States. Petition, ¶ 1; Harris Decl., ¶ 3. Petitioner has never been admitted to the United States. *Id.*, ¶ 28.

On October 3, 2013, CBP agents encountered Petitioner in the Rio Grande Valley, in the Texas Border Patrol Sector. Harris Decl., ¶ 3. He did not present himself at a Port of Entry. *Id.* He admitted that he entered the United States without the necessary legal documents to enter, pass through, or to remain in the United States. *Id.* Petitioner told CBP that he intended to travel to South Fallsburg, New York, where his aunt lived. Harris Decl., ¶ 4.

On October 4, 2013, Petitioner was issued a Form I-862 Notice to Appear ("NTA"), which charged him with being "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General," pursuant to Section 212(a)(6)(A)(i) of the INA (codified as 8 U.S.C. § 1182(a)(6)(A)(i)). Harris Decl., ¶ 6. The NTA directed Petitioner to appear before an IJ in Harlingen, Texas. *Id.* On October 4, 2013, CBP, issued Petitioner an I-200 Form, Warrant for Arrest of Alien, stating that he was being taken into custody. Harris Decl., ¶ 7.

On October 4, 2013, the date that he was detained by CBP, Petitioner was 17 years old. Harris Decl., ¶ 8. On the same day, CBP performed a UAC screening of Petitioner. *Id.* CBP deemed Petitioner a UAC. *Id.* CBP further determined that Petitioner was a UAC who was not a national or habitual resident of a country contiguous with the United States. *Id.*

*HHS ORR Receives Custody of, and Releases Petitioner*

On October 8, 2013, Petitioner was placed in the custody of the ORR, a division of HHS, pursuant to 8 U.S.C. § 1232(b)(3). *See* Harris Decl., ¶ 9. ORR transported Petitioner to a secure

facility, Southwest Key Casa Esperanza in Brownsville, Texas, pursuant to 8 U.S.C. § 1232(c)(2)(A), where he remained for approximately 22 days. *Id.* On October 30, 2013, ORR released Petitioner to a verified family sponsor – his mother – pursuant to a Sponsor Care Agreement. Harris Decl., ¶ 10; Pet., Ex. D. At that time, he was not yet 18. *Id.* On May 7, 2014, Petitioner appeared with his aunt before the Arlington, Virginia Immigration Court, where he filed a motion to change venue to New York, giving a new residence address in South Fallsburg, New York. Harris Decl., ¶ 11. Petitioner turned 18 years old in August 2014; he was no longer in HHS custody for months by that date. Harris Decl., ¶ 12. Petitioner was not in custody on the date that he turned 18, let alone transferred to the custody of DHS. *Id.*

Petitioner failed to appear before the New York Immigration Court on his next two scheduled Immigration Court dates and was ordered removed from the United States in absentia. Harris Decl., ¶¶ 13-14. On October 26, 2016, Petitioner appeared, with his attorney, before the New York Immigration Court. Petitioner admitted to the allegations set forth in the NTA and conceded the charge of removability. Harris Decl., ¶ 15. The matter was adjourned to December 28, 2016, at the Petitioner's request for time to prepare. *Id.* On December 28, 2016, Petitioner appeared, with his attorney, before the New York Immigration Court and filed applications for relief from removal; the matter was adjourned several times. Harris Decl., ¶ 16. On September 9, 2021, Petitioner and his attorney appeared before the New York Immigration Court. Petitioner was ordered removed from the United States to Honduras. Petitioner timely filed an appeal before the Board of Immigration Appeals ("BIA"). Harris Decl., ¶ 17.

*Adult Conviction of Operating a Motor Vehicle With .08 of 1% Alcohol or More in Blood*

On June 26, 2022 – almost a decade after entering the United States – Petitioner was arrested by the New York State Police for Aggravated Driving While Intoxicated: With a Child-

Passenger Less Than 16 – 1st Offense in violation of Vehicle and Traffic Law ("VTL") 1192(2)(A)(B), Driving With Intoxicated – 1st Offense in violation of VTL 1192(3) and Operate a Motor Vehicle With .08 of 1% Alcohol or More In Blood – 1st Offense in violation of VTL 1192(2). Harris Decl., ¶ 18. On August 4, 2023, Petitioner was arraigned in Sullivan County Court. *Id.* On July 23, 2024, Petitioner pleaded guilty to Operate a Motor Vehicle With .08 of 1% Alcohol or More In Blood – 1st Offense in violation of 1192(2). Petitioner was sentenced to three years of probation, license revocation, and a $500.00 fine. Harris Decl., ¶ 19.

*Petitioner's Removal Proceedings And His Detention Appurtenant Thereto*

On August 28, 2025, Petitioner appeared for a probation appointment in connection with his conviction of operating a motor vehicle with .08 of 1% alcohol or more in his blood. Harris Decl., ¶ 20. On that same date, Petitioner was taken into custody by ICE, pursuant to a Form I-200, Warrant for Arrest of Alien. The Form I-200 stated that Petitioner was taken into custody as authorized by INA Sections 236 (8 U.S.C. § 1226) and 287. *Id.* At the time he was placed in ICE custody, Petitioner was 29 years old. *Id.* Petitioner was transported to the ICE Newburgh, NY office for processing. Harris Decl., ¶ 21. On September 2, 2025, Petitioner was transferred to the Metropolitan Detention Center ("MDC") in Brooklyn, New York, where he remains detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*

On October 8, 2025, the BIA remanded the Petitioner's case to an immigration judge on the issue of whether Petitioner was eligible for voluntary departure.[6] Pet., ¶ 29; Harris Decl., ¶ 22. On November 7, 2025, Petitioner appeared virtually, with his attorney, before the New York Immigration Court located at 201 Varick Street, New York, New York. *Id.* The matter was adjourned four times at Petitioner's request, ultimately to January 6, 2026. Harris Decl., ¶ 23.

[6] If the Court would like to review the Board of Immigration Appeals decision concerning Petitioner, Respondents are prepared to file it under seal at the Court's direction pursuant to 8 C.F.R. § 208.6.

On January 6, 2026, Petitioner appeared virtually, with his attorney who filed a motion to withdraw representation; the Immigration Judge granted the motion. Harris Decl., ¶ 24. The matter was reset at the Petitioner's request to allow him time to find an attorney. *Id.* On January 21, 2026, Petitioner appeared virtually, with his new attorney, before the New York Immigration Court. Harris Decl., ¶ 25. The matter was adjourned to February 4, 2026, March 4, 2026, and then to April 1, 2026, at the Petitioner's request for time to prepare and file additional applications for relief from removal. Harris Decl., ¶¶ 26-27.

## ARGUMENT

### I. Petitioner's Detention Is Lawful Under The INA

#### A. Petitioner Is Lawfully Detained Under Section 1225(b)(2)

##### 1. The Text of Section 1225(b)(2) Shows That Statute Covers Petitioner

Petitioner entered the country unlawfully and he has never been admitted to the United States. *See* Harris Decl., ¶ 28. By statute, such undisputed facts make Petitioner an "applicant for admission," as that term covers aliens "present in the United States" who "ha[ve] not been admitted." *See* 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109. Under 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission," such as Petitioner, "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 removal proceeding under 8 U.S.C. § 1229a. No immigration officer has determined "clearly and beyond a doubt" that Petitioner is "entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner must be detained under § 1225(b)(2)(A).

As this Court and others have held, Petitioner's detention under § 1225(b)(2)(A) accords with the "natural reading" of the statute, "consistent with IIRIRA's purpose." *See Saamishvili,* 2026 WL 377574, at *2. Every "applicant for admission" is "seeking admission" and therefore

covered by § 1225(b)(2)(A). Congress made clear that "applicant for admission" is a subset of those who are "seeking admission" in a provision neighboring § 1225(b). To wit, § 1225(a)(3) 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). Being an applicant for admission is thus a particular way of seeking admission, such that the former is a subset of the latter. *See Chen*, 2026 WL 100761, at *9.

Neither the length of Petitioner's unlawful presence nor his distance from the border alters that as an "applicant for admission" he is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to," for example, in 8 U.S.C. § 1225(b)(1). *Mejia Olalde v. Noem*, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025). So, "[i]f Congress meant to say" in § 1225(b)(2)(A) "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 for § 1225(a)(1). To the contrary, § 1225(a)(1)'s inclusion of 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. 8 U.S.C. § 1225(a)(1). As a result, "many people who are not *actually* requesting to be admitted to the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (emphasis in original).[7]

Reading § 1225(b)(2)(A) to mandate detention for "applicant[s] for admission," such as Petitioner, accords with the text Congress enacted in IIRIRA: § 1225(b)(2)(A) places Petitioner under its ambit as an "applicant for admission," it mandates detention, and that text resolves this

[7] None of this is to say that "seeking admission" has no meaning beyond "applicant for admission." For example, lawful permanent residents returning to the United States are not "applicants for admission" but they still may be "seeking an admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C).

case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text").

**2. Supreme Court, Circuit Court, And District Court Authority Confirm That Petitioner Is Covered By Section 1225(b)(2)**

Petitioner's detention under § 1225(b)(2)(A) comports with Supreme Court precedent. As *Jennings* explains, applicants for admission are covered either by § 1225(b)(1) or (b)(2). *See* 583 U.S. at 287. Section 1225(b)(1) covers applicants for admission who assert a credible fear of persecution, and it mandates detention. 8 U.S.C. § 1225(b)(1)(B)(ii), (B)(iii)(IV). Section 1225(b)(2) – the provision relevant here – "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. And it mandates detention for them during removal proceedings. *Id.* at 297, 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.").[8]

The Fifth Circuit and the Eighth Circuit – the only two Circuit Courts to decide this issue on the merits to date – confirmed Respondents' reading that § 1225(b)(2)(A) covers applicants for admission, like Petitioner, regardless of where or how they entered the country, which is consistent with "eliminating the exclusion/deportation dichotomy." *See Buenrostro*, 166 F.4th at 499, 508. As the Fifth Circuit held, "that prior Administrations decided to use less than their full

[8] *Jennings* did not rule on whether non-admitted or inadmissible aliens fell within § 1226(a) as opposed to § 1225(b)(2)(A). Rather, it held that the duration of detention under either provision is not limited to a six-month time limit as the Ninth Circuit had held. *Jennings,* 583 U.S. at 292, 296-306. In doing so, it discussed these provisions in a way that is consistent with Respondents' argument.

It is true that in reaching its holding regarding the absence of a need for a six-month time limit, *Jennings* summarized § 1226 as applying to aliens "already in the country," 583 U.S. at 289, and elsewhere characterized that provision as applying to aliens "once inside the United States," *id.* at 288. But such language does not stand for the proposition that § 1226 is the *sole* detention authority for *every* "alien[] already in the country," inasmuch as in that very section *Jennings* refers to § 1226(a) as applying to aliens "present in the country" specifically who are removable under 8 U.S.C. § 1227(a), a provision that applies *only* to previously admitted aliens. 583 U.S. at 288. That characterization, that § 1226(a) applies to admitted aliens, is in fact Respondents' argument. Respondents argue that those not admitted do not *become* admitted simply by dint of their presence, but also that many aliens present are also admitted, and those are the aliens who are subject to 8 U.S.C. § 1226(a).

enforcement authority… does not mean they lacked the authority to do more." *Id.* at 507-08; see *Avila,* 2026 WL 819258 at *10. For such aliens not otherwise covered by § 1225(b)(1), § 1225(b)(2)(A) requires detention.

This Court's *Saamishvili* decision is consistent with the Supreme Court and the Fifth Circuit. In *Saamishvili*, this Court rejected a habeas petition from an alien present here 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* 2026 WL 377574 at *2. As this Court recognized, "applicants for admission" include "'both aliens arriving at the border and aliens already present in the United States without inspection.'" *See id.* *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.* (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, this Court held, regardless of where the alien is encountered or how long he has been here, after his "unlawful entry," he "continues to be[] subject to the mandatory detention requirement of Section 1225(b)(2)(A)." *Id.* at *2-*3; *see also Avila,* 2026 WL 819258 at *8-9.

Likewise, in *Chen,* the Court rejected a habeas petition from an alien present here without being admitted and detained under § 1225(b)(2)(A), holding that "under the plain language" of that statute, he was subject to mandatory detention pending decision on his removal. 2025 WL 3484855, at *4. *Chen* further held 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 Chen*, 2026 WL 100761 at *8 (§ 1225(a)(1) defines "an alien present in the United States who has not been admitted" as an "applicant for admission," and mandatory detention under § 1225(b)(2)(A) "reaches situations concerning" such aliens); *Candido v. Bondi*, 2025 WL 3484932 at *2 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.)[9] (detention under 8 U.S.C. § 1225(b)(2)(A) proper for alien present unlawfully for two decades without admission).[10] Like the aliens in the foregoing cases, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

**B. Petitioner Incorrectly Argues That He Is Covered By Section 1226**

Petitioner argues he is subject only to the detention authority in 8 U.S.C. § 1226(a), citing DHS's "longstanding practice" of applying § 1226(a) to noncitizens like Petitioner, who are arrested within the interior of the United States. This is a red herring. A federal agency may change its position if it offers a reasoned basis for doing so. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."); *Chen*, 2025 WL 3484855, at *7 & n.1 ("failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law"). Indeed, "authority granted by Congress . .

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[9] The Petitioners in *Saamishvili*, *Chen* and *Candido* have appealed to the Second Circuit. *See Saamishvili v. Flanagan*, No. 26-00354 (2d Cir.); *Chen v. Almodovar*, No. 25-3169 (2d Cir.); *Candido v. Bondi*, No. 25-3159 (2d Cir.). The Government has likewise appealed to the Second Circuit the adverse ruling on the same issue in *Da Cunha v. Freden*, 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025). *See Da Cunha v. Freden*, No. 25-3141 (2d Cir.). Briefing on the *Da Cunha* appeal completed on March 3, 2026. Oral argument is scheduled for April 6, 2026.

[10] *Accord Weng v. Genalo*, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Liang v. Almodovar*, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *see also Noel v. Walker,* 2026 WL 672903 (S. Fla. Mar. 10, 2026); *Sebastian v. Olson*, 2026 WL 672955 (E.D. Ky. Mar. 10, 2026); *Rayo v. Olson*, 2026 WL 594079 (E.D. Wisc. Mar. 3, 2026); *Jimenez v. Hardin*, 2026 WL 522991 (M.D. Fla. Feb. 25, 2026); *Mendoza v. Raycraft,* 2026 WL 507389 (N.D. Ohio Feb. 24, 2026); *Fleurimond v. Noem*, 2026 WL 507542 (D. Ariz. Feb. 24, 2026); *Saucedo Carera v. Bondi*, 2026 WL 508084 (D.N.D. Feb. 24, 2026); *Paz Salazar v. Noem*, 2026 WL 496956 (E.D. Cal. Feb. 23, 2026)); *Enriquez Pineda v. Noem,* 2026 WL 496680 (E.D. Mo. Feb. 23, 2026); *Gallardo Cardenas v. Noem*, 2026 WL 496797 (M.D. Fla. Feb. 23, 2026); *Guadarrama de Andrade v. Noem*, 2026 WL 483279 (D. Minn. Feb. 20, 2026); *Argenis M. v. Bondi*, 2026 WL 478189 (D. Minn. Feb. 19, 2026).

. cannot evaporate through lack of administrative exercise." *See Bankamerica Corp. v. U.S.*, 462 U.S. 122, 131 (1983); *accord Avila,* 2026 WL 819258 at *10.

In July 2025, DHS began applying the reading of § 1225(b)(2) discussed *supra* at Part I.A. *See e.g.,* Memorandum from Rodney S. Scott, U.S. Customs & Border Protection, Detention of Applicants for Admission (July 10, 2025).[11] Specifically, DHS concluded that all aliens who enter the country without being admitted are "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from [ICE] custody except by [8 U.S.C. § 1182(d)(5)] parole." *Id.* As a result, the "only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. § 1226(a)] are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227]." *Id.* This change was consistent with DHS's "broad discretion to make enforcement decisions in 'the immigration context' and is consistent with the text of § 1225. *See Chen*, 2025 WL 3484855 at *7. [12] Setting aside past practices, Petitioner's attempt to disregard the text of § 1225(b)(2)(A), to render § 1226(a) applicable, with its desirable absence of mandatory detention, is without merit.

Petitioner's reading of the INA that he is covered by § 1226(a) would return immigration law to its pre-IIRIRA construct and ignore the 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*, --- F. Supp. 3d ---, 2025 WL 2730228, at *4. Under the pre-IIRIRA framework, Petitioner would have fallen into the category of aliens who could seek bond because

[11] https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf.

[12] DHS cannot be estopped from implementing its interpretation. *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (agency "not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation and "'[a]n administrative agency is not disqualified from changing its mind'"). 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). 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 *City of New York v. Shalala,* 34 F.3d 1161, 1168 (2d Cir. 1994)).

he is present here. But through § 1225(a)(1), Congress corrected this "anomaly" 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*, 976 F.3d at 928; *Hing Sum*, 602 F.3d at 1100. Hence, the pivotal factor in determining Petitioner's status after IIRIRA is "whether or not [he] has been lawfully admitted," not whether he physically entered the United States. *Hurtado*, 29 I. & N. Dec. at 223-24.

Section 1226(a) applies only to some persons during their removal proceedings: in general, individuals who, unlike applicants for admission subject to § 1225, 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 or otherwise violated the terms of that visa, or who have been found later not to have been lawfully admitted. *See* 8 U.S.C. § 1226(c)(1)(A)-(D). *Buenrostro*, 166 F.4th at 500 (1226(a) "covers numerous grounds … including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable or were improperly admitted"). For them, detention during their removal proceedings is generally discretionary, 8 U.S.C. § 1226(a)(1)-(2),[13] and they may also seek custody redetermination (a bond hearing) before an IJ and can appeal an IJ's custody determination to the BIA. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

To the extent that Petitioner argues that Respondents' reading of § 1225(b)(2)(A) would render superfluous the LRA, which added inter alia § 1226(c)(1)(E)(i) and (ii), and requires mandatory detention for some categories of those not yet admitted, Petitioner errs. While those admitted under § 1225(b)(2)(A) are subject to discretionary parole under 8 U.S.C. § 1182(d)(5)(A), the LRA ensured that aliens of the sort who killed Laken Riley would not be so

[13] Conditional parole under § 1226(a) is distinct from humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

easily released; the only release under 8 U.S.C. § 1226 is for the restrictive bases identified in § 1226(c)(4). There may be some overlap between § 1225(b)(2)(A) and § 1226(c), in that the detention authority in either could cover certain "aliens who are deemed inadmissible." *See Weng,* 2026 WL 194248, at *5. But "redundancies are common in statutory drafting and may be created in a congressional effort to be doubly sure." *Id.* at *6. And here, detention under § 1225(b)(2)(A) and § 1226(c) differ in at least one important respect: the standards by which the covered alien may be released -- as noted above – which by including a small subset of not admitted aliens within the LRA, "removed … detention discretion for aliens charged with specific – but not all – crimes." *Chavez*, 2025 WL 2730228, at *5; *accord Valencia*, 2025 WL 3205133, at *4; *Rojas*, 2025 WL 3033967, at *9.

Many courts have held that § 1225(b)(2)(A) covers only aliens "seeking admission," and that aliens must be taking an affirmative step towards admission to be covered by § 1225(b)(2)(A).[14] Respectfully, these arguments are incorrect. They miss how Congress defined and used "applicant for admission" and "seeking admission" throughout § 1225. Section 1225(b)(2)(A) requires the detention 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." 8 U.S.C. § 1225(b)(2)(A). Under the "ordinary meaning" of those terms, "[t]here is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something," so that "[w]hen a person applies for something, they are necessarily seeking it." *See Buenrostro-Mendez*, 166 F.4th at 503. Applicants for admission need not take any added step to be "seeking

[14] *See, e.g., J.U. v. Maldonado*, 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Montoya v. Bondi*, 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Crespo Tacuri v. Genalo*, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026); *Ye v. Maldonado*, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.); *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.).

admission"; they already are. Thus, "alien seeking admission" does not restrict the coverage of § 1225(b)(2)(A) narrower than "applicant for admission." [15]

Petitioner's argument that § 1225(b)(2)(A) applies only to aliens "seeking admission" or perhaps close to the border "introduce[s] more questions to the statute than answers." *See Chen*, 2026 WL 100761 at 9. Among these: "at what point does an alien who enters unlawfully no longer actively desire admission? Indeed, when is someone already here?" *Id.* As another judge 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?

*See Montoya v. Holt*, 2025 WL 3733302, *2 (W.D. Okla. Dec. 26, 2025). The answers to these questions "sound in the province of an elected Congress rather than an unelected judge." *Id.* As Judge Cronan concluded, "[t]he answer to these messy questions [] 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.'" *Chen*, 2026 WL 100761 at *9. Neither the duration of Petitioner'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."

Here, Petitioner falls within the statutory definition of "applicant for admission" as he was "present" in this country and had "not been admitted" and had not "clearly and beyond a doubt" established that he was "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Thus, he "shall be detained" during the pendency of his removal proceedings. *Id.*

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[15] As the Fifth Circuit held, "when an English speaker uses a phrase such as 'to bike, jog, or otherwise exercise,' the first two items constitute one item out of the overall set," so "an 'applicant for admission' is necessarily someone who is 'seeking admission.'" *Buenrostro*, 2026 WL 323330, at *5. *See also Chen*, 2026 WL 100761 at *9.

## II. Petitioner's Detention Comports With Due Process

Petitioner claims that his detention violates his procedural and substantive due process rights because he is subject to mandatory detention, and not a discretionary determination of flight risk and subsequent opportunity for a bond hearing.

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 due process. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge,* 424 U.S. 319, 334 (1976)). This claim fails because for applicants for admission, the process Congress provides suffices for due process too, and that is what Petitioner received.

Because Petitioner is an applicant for admission and thus treated for constitutional purposes as if stopped at the border,[16] he is lawfully detained pursuant to § 1225(b), and his procedural due process rights have not been violated. 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); *Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997).

More than a century of Supreme Court precedent confirms that applicants for admission are treated differently for due process purposes from other categories of detained aliens. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In the INA, Congress treated applicants for admission differently by detaining them during ongoing proceedings to effectuate their removal. Unlike admitted aliens later placed in removal proceedings and detained under § 1226, applicants for admission are "request[ing] a privilege,"

[16] 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." *Thuraissigiam*, 591 U.S. at 139 (2020).

*Landon v. Plasencia*, 459 U.S. 21, 32 (1982), and therefore "stand[] on a different footing," *Mezei*, 345 U.S. at 212.

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 8 U.S.C. § 1225, which allows an alien a 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 who have "entered" and developed significant ties to this country during this time. *See e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (a disabled girl present for nine years must be "regarded as stopped at the boundary line"); *Mezei,* 345 U.S. at 214–215 (an alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"); *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) (paroleee continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" and "due process amounts to whatever the procedure authorized by Congress is").

Here, "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. As the

due process rights of applicants for admission are limited to the process that Congress chooses to provide, and Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) 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), Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212.

Further, Petitioner received the process due under the TVPRA, having been transferred to HHS, and then released by HHS to a family member under 8 U.S.C. § 1232(b) and (c)(2)(A). During the time he was a UAC, Petitioner was entitled to certain protections that apply to those in DHS custody and under age 18 under 8 U.S.C. § 1232(c)(2)(A). *See also* 6 U.S.C. § 279(g)(2) (UAC status dependent on alien being under 18 years of age). He received those protections. However, Petitioner also wants the protections afforded for aliens who are transferred to DHS custody when they turn 18; he was not transferred to DHS custody when he turned 18.

Petitioner's detention for the time-limited pendency of his removal proceedings also does not run afoul of his substantive due process rights. 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) (internal quotations omitted). 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, "[d]etention 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). 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"). Here, Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is rational, and mandated, subject only to discretionary parole under 8 U.S.C. § 1182(d)(5)(A). He is owed no further process.

### III. Petitioner Was Not Entitled To A TVPRA Analysis

Petitioner's assertion that he was owed consideration of the least restrictive setting available, such as alternatives to detention, as found in §1232(c)(2)(B), ignores the plain language of that statute. Section 1232(c)(2) expressly states that any additional process upon reaching majority requires that "an unaccompanied alien child *in the custody of [HHS]*," § 1232(c)(2)(A), "*is transferred to the custody of the Secretary of [DHS].*" 8 U.S.C. § 1232(c)(2)(B) (emphasis added). In order to be "*transferred to*" DHS custody, the UAC must still be *in* the custody of a different federal agency, namely HHS.

That is not what occurred here. Petitioner was released to a family member while he was still a minor, taking him out of the custody of ORR. Further, and concomitantly, as stated above, ORR never transferred custody of Petitioner to DHS. Therefore, under the plain language of the statute, Petitioner was not entitled to a § 1232(c)(2)(B) assessment. Rather, Petitioner is entitled only to the process due to any other alien who is an applicant for admission under § 1225(b)(2). A *former* UAC is, by definition, an adult and therefore not entitled to the considerations Congress specified in § 1232(c)(2)(B) for those aging-out of HHS custody. *See Mendez Ramirez*, 612 F. Supp. 3d at 213 (denying habeas and finding former UAC was subject to detention under

§ 1225(b)(2)(A), including because petitioner was over 18). Thus, Petitioner has already received the process due to him by Congress under the TVPRA in his transfer to ORR and release to a family member. His attempt to secure UAC relief in perpetuity is unavailing.

**IV. The APA Claim Is Improper**

Petitioner claims his detention is "arbitrary and capricious" and warrants review under 5 U.S.C. § 706(2)(A). However, the APA is not a vehicle for claims arising out of detention. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement," those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." *See Id.* at 1005. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim—though they fail for the reasons discussed *supra*—and are not cognizable under the APA. Additionally, by the APA's terms, it is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Petitioner's APA claims are independently barred by this limitation. Here, habeas is an "adequate remedy" through which Petitioner can challenge his detention.

**CONCLUSION**

For the reasons stated herein, the Petition should be denied.

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