UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YOK

JOHAN JACINTO ARRAIZ PEREZ,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 1:25-cv-5786 (KPF)

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Respondents do not contend they had any individualized reason to redetain Mr. Johan Arraiz Perez when his immigration court proceedings were adjourned on July 11, 2025 nor that there is any evidence to suggest he poses either a flight risk or a danger to the community.[1] Instead, Respondents contend that they now possess the power to detain him notwithstanding his previous release on his own recognizance because they have invoked a new, inapplicable statute authorizing his *mandatory* detention. This interpretation of Respondents' statutory authority is not only novel but wrong. It runs counter to the facts of Mr. Arraiz Perez's case; the plain text and structure of the statute; and decades of established judicial and agency precedent.

Respondents' attempt at a sleight of hand as to their authority to detain Mr. Arraiz Perez does not defeat his substantial constitutional claims under both the Fourth and Fifth Amendments. Those claims merit his immediate release irrespective of his statute of detention, but all the more so here where he was undisputedly released on conditional parole at the border—putting him outside the purview of the cases Respondents rely upon to suggest he lacks any due process rights. Respondents' argument that he must first seek a bond hearing, despite their own contention he is ineligible for bond and the agency's (newly promulgated) binding precedent rendering him ineligible for bond, is a meritless attempt at delay. Seeking bond—at least absent an order from this Court—would be futile. And as another court in this district held just today, it would also be inappropriate given the substantial constitutional questions raised.

Accordingly, Mr. Arraiz Perez asks the Court to order his immediate release.

[1] Petitioner is concurrently filing a status letter updating the Court on a change in his procedural posture.

FACTUAL BACKGROUND

Respondents do not contest the material facts of this case. Mr. Arraiz Perez entered the United States without inspection on or around December 8, 2023. He was encountered by Respondents in Texas and detained thereafter until December 12, 2023. Charles Decl. (ECF 9) at ¶ 4. Respondents "issued and personally served" him with a Notice to Appear (NTA) in immigration court in New York City. *Id.* The NTA charges him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), which is a statutory provision applicable to noncitizens who are "present in the United States without being admitted or paroled, or who arrive[ ] in the United States at any time or place other than as designated by the Attorney General."

That same day, "CBP released Arraiz Perez on his own recognizance pursuant to INA 236, 8 U.S.C. 1226(a)(2)(B), pending the outcome of removal proceedings...." *Id.* at ¶ 6. While Respondents claim a lack of bedspace was the reason, they do not dispute that noncitizens can be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"). In releasing Petitioner, Respondents necessarily conducted that analysis and determined he posed neither a danger nor a flight risk.

Once in New York City, where his removal proceedings were commenced, Mr. Arraiz Perez filed a timely asylum application on February 29, 2024. Charles Decl. at ¶ 8. He attended every subsequent immigration-court hearing, including his most recent one on July 11, 2025. *Id.* at ¶ 10. On July 11, the immigration judge set a next hearing date for January 27, 2026. *Id.*

Yet as he left that court appearance, Respondents "arrested Arraiz Perez… pursuant to an administrative arrest warrant," *id.* at ¶10, as his English teacher who had accompanied him to court watched in horror. Juliana Giraldo Decl. (ECF 5-3) at ¶ 6. Respondents do not claim to have provided him any notice or opportunity to be heard. Respondents also fail to provide a copy of the administrative arrest warrant or to allege pursuant to what statute it was issued, but in other cases with similar facts, Respondents' warrants for redetention have revealed that Section 1226 was the stated basis. *See* Warrant for Arrest of Alien, *Benitez Lopez v. Francis*, 1:25-cv-05937-DEH (SDNY July 24, 2025) (ECF No. 9-4); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (petitioner's redetention on May 29, 2025 was "on a warrant issued pursuant to Section 1226").

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention.

Respondents are wrong about the statutory authority for Mr. Arraiz Perez's detention. Like a growing number of other courts, this Court should reject Respondents' atextual statutory interpretation and its claim that Mr. Arraiz Perez is subject to mandatory detention and instead hold that it is the prior, well-established case law that remains applicable to his detention. *See Lopez Benitez v. Franco*, 1:25-cv-05937-DEH (S.D.N.Y. July 28, 2025) (oral decision attached as Exhibit A); *Martinez*, 2025 WL 2084238, at *4; *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025)); *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025).

A. Respondents' Contention That Entrants Without Inspection Are Detained Pursuant to Section 1225 Is a Departure from Decades of Settled Practice.

For decades, courts and the agencies Respondents lead have recognized that the detention of individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a). Regulations promulgated nearly thirty years ago provide that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until now, Respondents consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

It is only in the past three months that first the agencies and now their counsel in habeas litigation have pivoted to a new theory entirely: noncitizens who entered the U.S. without inspection are "applicants for admission," still "seeking admission" years after their release on conditional parole or bond, and as a result are subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without access to a bond hearing. Resp. at 6-8; *cf.* OSC Memo. (ECF 5-2) at 8-9; *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025); Exh. B to Solis Decl. (ECF 5-6) (copy of internal DHS memo dated July 8, 2025); Exh. A to Solis Decl. (ECF 5-5) (news article describing policy shift); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (describing DHS's major shift in position just weeks ago).

B. The Record Demonstrates Mr. Arraiz Perez's Detention Is Pursuant to Section 1226.

Mr. Arraiz Perez's case predates Respondents' recent reimagining of the detention statutes. As Respondents note, after they apprehended him in Texas in December 2023, "Petitioner was

released on his own recognizance...pursuant to Section 1226(a)(2)(B)," namely conditional parole for those detained pursuant to § 1226. Resp. at 15; Charles Decl. at ¶ 6. Mr. Arraiz Perez was also charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which is a statute applicable to noncitizens who are already present in the U.S., not to noncitizens who are considered "arriving." *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007); *Jennings v. Rodriguez*, 583 U.S. 281, 289 122 (2018) (detention of those "already in the country pending the outcome of removal proceedings" is governed by § 1226).

Mr. Arraiz Perez's current statute of detention is governed by that determination in 2023. *See* Oral Decision, *Lopez Benitez*, 1:25-cv-05937-DEH at *37.[2] Respondents offer no statutory basis for their purported authority to alternate the source of their detention authority with respect to a particular person as they please absent a change either in their criminal history of the posture of their removal proceedings. Nor does one exist. Instead, as the Second Circuit has held, the "government's power to detain an immigrant must be grounded in a specific provision of the INA," *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018), *as amended* (May 22, 2018), a requirement that would be meaningless if the authority could be shifted midstream. Here, § 1226(a)(2)(B) governed Mr. Arraiz Perez's custody at the time of his initial release. A shift now has no basis in fact or law and would raise serious retroactivity concerns. *See infra* at I(D).

C. Respondents' Interpretation of Its Detention Authority Runs Counter to the Statute.

As several courts have recently found, Respondents' assertion that Petitioner is "lawfully" detained under Section 1225(b)(2) is completely at odds not just with the record but also with the

[2] As noted, conspicuously absent from Respondents' declaration in support of their opposition is any contention as to what statute governed Mr. Arraiz Perez's redetention earlier this month or a copy of the administrative warrant allegedly issued at the time. Charles Decl. at ¶ 10 (stating only that he was redetained without referencing a statute).

plain meaning and overall structure of the federal laws that govern civil immigration detention. Its application to individuals already in the U.S. at the time of detention—much less *re*detention—contravenes decades of precedent from both courts and the Board of Immigration Appeals. *Cf.* Resp. at 6. Respondents' position fails basic statutory analysis.

As a threshold matter, and as noted, this is a dramatic change—for immigration authorities and the U.S. Attorney's Office. "[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *See Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up). That practice was consistent over decades until roughly three weeks ago, *see supra* at 3-5, and counsels rejection of Respondents' new claim.

Statutorily, Respondents' U-turn also does not make sense. This Court has the authority to decide whether Respondents have lawfully invoked one detention provision instead of another. *Hechavarria*, 891 F.3d at 54.[3] In making this determination, the Court must ensure that "no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Moreover, the Court may properly consider the statutory scheme's structure, contextual factors, relevant legislative history, and Congress's purpose. *See, e.g., Gundy v. United States*, 588 U.S. 128, 140-41 (2019).

Using those interpretive tools, a growing list of courts have recently concluded that any invocation of Section 1225(b)(2) against an individual originally released "pursuant to Section 1226" fails as a matter of statutory interpretation. *See supra* at 3-4 (collecting cases). The Court should reach the same conclusion here.

[3] In *Hechavarria*, Respondents "argue[d] that Section 1226 governs only the detention of aliens before a removal order is issued." *Id.* at 57. While Section 1225(b)(2) was not at issue, Respondents' argument at the time reflected the longstanding view that Section 1226 is the primary statute that governs custody determinations in ongoing removal proceedings.

First, by its own terms, Section 1225(b)(2)'s language does not apply to the circumstances presented here. While Respondents spend much of their time arguing that Petitioner is an "applicant for admission," they fail to grapple with the rest of Section 1225(b)(2), which says it applies to individuals who "are *seeking* admission." (emphasis added). *See Martinez v. Hyde*, 2025 WL 2084238, at *2 (Section 1225(b)(2), by its terms, requires that an individual is "(1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted.") (quotations omitted). "The phrase 'seeking admission' is undefined in the statute but necessarily implies some sort of present-tense action." *Id.* at *6. But when Respondents arrested Mr. Arraiz Perez, he was *already* inside the United States, both when he was encountered in Texas in December 2023, *see* Charles Decl. at ¶ 4, and in July 2025 when Respondents re-detained him in New York City. His NTA confirms this: he was charged with a removability charge, 8 U.S.C. § 1182(a)(6)(A)(i) which is applicable to someone who is *already present* in the U.S. Charles Decl. at ¶ 3. As someone who was no longer in the act of "seeking" admission, but is instead already here (and indeed living in New York City following release on conditional parole), Mr. Arraiz Perez does fall within the scope of Section 1225(b)(2).

Second, Respondents' attempted substitution of Section 1225(b)(2) for Section 1226 contravenes the fundamental rule that courts must strive to harmonize statutes by giving "effect, if possible, to every clause and word of a statute," while respecting their overall logic and structure. *Hechavarria*, 891 F.3d at 55. Under Respondents' theory, Section 1226 would be rendered meaningless. Oral Decision, *Lopez Benitez*, 1:25-cv-05937-DEH at *39 (noting Respondents' argument raises doubts as to "when 1226 is ever applicable" but "statutes should be read in such a manner that provisions aren't rendered superfluous").

To start, Section 1226(a) provides a comprehensive framework for determining whether someone who falls within its ambit—i.e. someone who was detained pursuant to an administrative warrant—may be subjected to mandatory detention or released. Its structure is straightforward. For individuals detained "[o]n a warrant" pending removal proceedings under Section 1226, Respondents: (1) "*may* continue to detain the arrested [noncitizen]"; (2) "*may* release the [noncitizen] on ... bond"; or (3) "*may* release the [noncitizen] on ... conditional parole." 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B) (emphases added). The repeated use of "may" plainly signals Congress' intent to establish a discretionary detention framework for noncitizens arrested pursuant to a warrant. Critically, Section 1226(a) also expressly excludes certain "criminal" noncitizens from its discretionary framework—but it contains no similar exclusion for anyone else. *See* 8 U.S.C. § 1226(a) ("*Except* as provided in subsection (c)") (emphases added). "That express exception" to Section 1226(a)'s discretionary framework "implies that there are no other circumstances under which" detention is mandated for noncitizens subject detained pursuant to an administrative warrant. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (*citing* A. Scalia & B. Garner, Reading Law 107 (2012)). Notably missing is any textual escape hatch that allows Respondents to funnel someone who was detained and released under Section 1226 into subsequent mandatory detention under Section 1225(b)(2). *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) ("that Congress has created specific exceptions" to a statute's applicability "proves" that the statute generally applies absent those exceptions).

Moreover, Respondents' interpretation of Section 1225(b)(2) would also render superfluous a recent statutory amendment to Section 1226. Section 1226(c)(1)(E)—added to Section 1226 in 2025 by the Laken Riley Act[4]—makes a noncitizen subject to mandatory detention

[4] Pub. L. No.119-1, 139 Stat. 3 (2025).

if he (i) is inadmissible under for having entered without inspection, engaging in fraud, or lacking entry documents; "*and*" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes. 8 U.S.C. § 1226(c)(1)(E) (emphasis added). The conjunction "and" establishes that detention is mandatory only when both criteria are satisfied. Under Respondents' theory, Section 1226(c)(1)(E)'s mandatory detention for inadmissible noncitizens who are implicated in certain crimes, including those "present in the United States without being admitted or paroled," would be meaningless since, in Respondents' view, "all noncitizens who have not been admitted" would already be under Section 1225(b)(2)'s mandatory detention authority. *Bostock*, 2025 WL 1193850, at *14. If Congress deemed it necessary to amend Section 1226 to include a mandatory detention provision triggered not merely by unauthorized entry but also by specific criminal conduct, it means Congress knew that Section 1225(b)(2) alone could not achieve that outcome.

For the foregoing reasons, the Court should reject Respondents' assertion that Mr. Arraiz Perez is subject to mandatory detention.

D. Respondents' Claim to Have Shifted Authority for Mr. Arraiz Perez's Detention Would Also Raise Serious Retroactivity Concerns.

Moreover, it would raise serious retroactivity concerns, particularly insofar as Respondents contend that through this shift they have wiped out all of Mr. Arraiz Perez's constitutional rights. Resp. at 9-13. In this circuit, courts must weigh five factors to determine whether an agency may apply a new rule, whether through adjudication or rulemaking, retroactively:

> "(1) whether the case is one of first impression, (2) whether the new rule presents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order places on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard."

Obeya v. Sessions, 884 F.3d 442, 445 (2d Cir. 2018).

All five factors overwhelmingly favor Mr. Arraiz Perez. Starting with the first, as set forth above, Respondents' interpretation of the interplay between Sections 1226 and 1226 is novel and upends decades of legal status quo. For that reason, Respondents' invocation of Section 1225(b)(2) against Mr. Arraiz Perez undoubtedly presents an "abrupt departure" under the second and third factors. Furthermore, under the fourth factor, Mr. Arraiz Perez is suffering a substantial burden. Respondents have unexpectedly detained him and now contend that he "cannot be released from custody during [his] removal proceedings" absent a discretionary decision of DHS. Resp. at 11. Even more damningly, they contend that—through the retroactive application of their new rule—all of Mr. Arraiz Perez's constitutional rights beyond those accorded him by statute have simply vanished. Resp. at 9-13.

As for the fifth factor, while Respondents will likely claim an interest in applying their new interpretation uniformly, that interest cannot outweigh the significant burden currently imposed on Mr. Arraiz Perez, particularly given Respondents' newly "demonstrated willingness to depart from [their] own precedent." *Obeya,* 884 F.3d at 449.

II. Respondents Have Failed to Address the Constitutional Violations in Petitioner's Case, Which Merit Immediate Release Irrespective of the Statute of Detention.

Respondents' sole defense of Mr. Arraiz Perez's ongoing confinement is that he is now detained under a new statute authorizing mandatory detention. Apart from that, Respondents make no effort to address the constitutional violations that he alleges Respondents committed in re-detaining him. Importantly, Mr. Arraiz Perez seeks his release due to these constitutional violations *even if* the Court agrees he is detained pursuant to § 1226(a), as that is the remedy warranted by the severity of the violations and the lack of any evidence that Petitioner should be detained. Oral Decision, *Lopez Benitez v. Franco*, 1:25-cv-05937-DEH at *43; *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025); *Chipantiza-Sisalema v. Francis*, No.

25 CIV. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *9.

First, Respondents do not allege that Mr. Arraiz Perez's redetention was due to an assessment of either danger or flight risk, the sole two lawful bases for immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Nor could they, as there is absolutely no indication that he is either a danger or a flight risk. He has no criminal history; he filed a timely asylum application; and he has attended immigration court. In the absence of a justification, his redetention violates his right to due process. *See Padilla,* 704 F. Supp. 3d at 1171 (finding noncitizen asylum applicants subjected to mandatory detention had credibly alleged violations of their right to substantive due process).

Second, Respondents do not claim to have provided him notice—in fact, they cite not a single document he was served—nor to have accorded him any process whatsoever in redetaining him. Although the Second Circuit has held that the well-known test for constitutionality of process set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), is applicable to due-process challenges, *see* OSC Memo. at 4, Respondents fail to address that test at all. But as Mr. Arraiz Perez set out and a growing body of case law confirms, the deprivation of his most essential interest—that of liberty—without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Valdez*, 2025 WL 1707737, at *4 ("Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights"); *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (same). The risk of erroneous deprivation, in the absence of any individualized custody determination, is enormous—and the public interest in detention nonexistent.

Third, Respondents contend that the Fourth Amendment is inapplicable because

administrative arrests are permissible, Resp. at 14, but without addressing the crux of Mr. Arraiz Perez's claim, which is that his redetention impermissibly relied on the same basis as his first detention in 2023. An administrative arrest provides a valid basis for detention of a noncitizen, Resp. at 14 (citing *Abel v. United States*, 362 U.S. 217, 233 (1960)), but the agency has never interpreted that to mean administrative warrants can be successively issued against the same person on the same basis and without new cause. "[A]dministrative warrants raise serious due process and Fourth Amendment questions when used in this way." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *14 (S.D.N.Y. June 12, 2018); *see also Saravia*, 280 F. Supp. 3d at 1196 ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.") (citation omitted).

Respondents assert that "DHS may revoke [its earlier] release," Resp. at 14, but that is not what happened. Mr. Arraiz Perez was detained pursuant to a new administrative warrant. Charles Decl. at ¶ 10. As noted, Respondents have conspicuously chosen not to file that warrant, *cf. Lopez Benitez*, 1:25-cv-05937 (S.D.N.Y. July 24, 2025) (ECF Nos. 9-1, 9-4) (administrative warrants), but they offer no reason to think any new basis for detention existed.

Rather than confront these core violations, Respondents contend simply that Mr. Arraiz Perez has no constitutional right to challenge his detention. Resp. at 8-12. That is wrong as a statutory matter. *See supra* at I(B). And even if it were not, courts have concluded that redetention must comport with the precepts of due process even for noncitizens who (unlike Mr. Arraiz Perez) are *credibly* deemed "arriving." *See Lopez*, 2018 WL 2932726, at *7 (ordering release of "arriving" noncitizen who was unlawfully redetained); *Mata Velasquez v. Kurzdorfer,* No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (same). For Mr. Arraiz Perez, for whom the

"arriving" label strains credulity, *see supra* at I, the due-process right to notice of the basis for detention is even greater. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 368 (S.D.N.Y. 2019) (ordering release of petitioner who was detained without written notice and "blindsided and unknowingly deprived of the most sacred things he enjoyed – his liberty" through government "conduct [that] reeks of arbitrariness and carelessness").

Respondents' attempt to extinguish Mr. Arraiz Perez's constitutional rights through application of a new statutory label fails irrespective of the statute under which he is detained. *cf.* Res. at 8-10 (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)). In neither *Thuraissigiam* nor *Mezei*, nor any other case Respondents offer to suggest that individuals in Mr. Arraiz Perez's situation lack due-process rights, Resp. at 10-11, was the petitioner not a parolee or otherwise "arriving" at all but in fact a regular entrant to the U.S., determined to be present without authorization and released on conditional parole under § 1226(a). *Cf. Thuraissigiam*, 591 U.S. at 139 ("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") (quoting *Mezei*, 345 U.S. at 215); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) ("The entry fiction applies to aliens – like Petitioner – who are stopped at the border and subsequently paroled into the United States."). Mr. Arraiz Perez was not paroled. He was released pursuant to conditional parole and instructions to appear in court, which he did."[5] This crucial distinction renders the cases that Respondents point to inapposite.

[5] The distinction between parole and conditional parole has given rise to litigation in several circuits on the ancillary question of eligibility to adjust status. *See Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011).

In any event, numerous courts have concluded that individuals deemed arriving are protected by the right to due process. *See, e.g.*, *Padilla*, 704 F. Supp. 3d at 1170–72; *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825–26 (W.D. Pa. 2025); *Leke v. Hott*, 521 F. Supp. 3d 597, 604–05 (E.D. Va. 2021); *Bermudez Paiz v. Decker*, 2018 WL 6928794, *10 (S.D.N.Y. Dec. 27, 2018) (collecting cases). *Thuraissigiam* does not change this, as it did not concern a challenge to detention at all but rather to the procedures dictating admission—a distinct issue. 591 U.S. at 107 (noting petitioner "did not ask to be released"); *see Padilla,* 704 F. Supp. 3d at 1171 (discussing this distinction). The thicket of differences from *Mezei*, 345 U.S. at 212, *see* Resp. at 8-9, is yet greater. Mr. Arraiz Perez has not been "denied entry," *Mezei*, 345 U.S. at 212; he was detained in the interior, *cf. id.* at 216; and his release from custody poses no national security concerns, such that release would defeat the very objective of Respondents in excluding him, *cf. id.* Mr. Arraiz Perez's redetention, by contrast, is reviewable and violates his constitutional rights.[6]

III. Exhaustion is Unnecessary Because Respondents' Own Binding Precedent Forecloses Petitioner's Eligibility for Bond.

Respondents next urge the Court in the alternative to sidestep the significant constitutional issues in this case by imposing a prudential exhaustion requirement, Resp. at 14-20, notwithstanding their own exegesis on his ineligibility for bond. But as Mr. Perez Arraiz set forth in his earlier memorandum, exhaustion is not required and prudential exhaustion is inappropriate here for several reasons, including futility; the serious constitutional questions he raises; and the irreparable harm resulting from his ongoing detention. OSC Memo. at 7-10; *see Lopez Benitez*, 1:25-cv-05937-DEH (concluding that administrative exhaustion is not required). Respondents

[6] Petitioner asks the Court to grant his petition. But to the extent the gravity of these issues merits further briefing, Petitioner renews his request for release pursuant to *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). *See* Pet'n at ¶ 35-37.

have violated his constitutional, statutory and regulatory rights by jailing him without *any* individualized custody determination, *cf.* 8 C.F.R. § 1236.1(c)(8), and invoking an erroneous authority to do so; it is not now for him, wrongly deprived of his liberty, to spend weeks or months more in detention attempting to correct their error.

Respondents point to two other cases in this district requiring exhaustion, Resp. at 19, but as Mr. Arraiz Perez already explained, the facts there differed significantly. Most importantly, in both of those cases Respondents *conceded* that the petitioners were detained pursuant to § 1226(a), rendering further action by the courts unnecessary to ensure a bond hearing. *Cf.* Resp. at 19 (conceding a bond hearing is only availably "if the Court determines he is detained under Section 1226(a)"). Here Respondents have zealously contended Mr. Arraiz Perez is not bond eligible, a question this Court now must squarely confront. Respondents' lofty goal of "conserving judicial resources," Resp. at 18 (quoting *Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998)), is thus infeasible. Moreover, should this Court agree Mr. Arraiz Perez is detained pursuant to Section 1226(a), that would invalidate Respondents' sole basis for redetaining him. In the absence of any justification for his detention, he should not remain in custody even one more day.[7]

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to order his immediate release from custody.

[7] As already noted, the applicability of *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) was also not at issue in either *Castillo Lachapel v. Joyce*, No. 25 CIV. 4693 (JHR), 2025 WL 1685576, at *1 (S.D.N.Y. June 16, 2025) or *Capunay Guzman v. Joyce*, 25-CV-4777 (RA), 2025 WL 1696891, at *2-3 (S.D.N.Y. June 17, 2025). In *Castillo*, that was because the petitioner was not detained for more than two years after initial entry into the U.S. 2025 WL 1685576, at *1, and in *Capunay Guzman*, Petitioner did not allege that seeking bond would be futile based on binding Board of Immigration Appeals precedent.

July 28, 2025

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CERTIFICATE OF SERVICE

I, Paige Austin, certify that on July 28 2025, electronically filed the attached the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus and accompanying Exhibit with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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