

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SMIT PATEL,

Petitioner,

v.

JUDITH ALMODOVAR, *et al.*,

Respondents.

HON. SUSAN D. WIGENTON

Civil Action No. 25-cv-15345

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

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INTRODUCTION

Petitioner, Smit Patel, has been unlawfully detained since September 4, 2025, when he was illegally apprehended by masked individuals “while he was waiting for his hearing in Immigration Court.” *See* Respondents’ Answer to the Verified Petition for Writ of Habeas Corpus, ECF 18 (“Answer”), at 5. Respondents do not assert that Petitioner poses a danger or a flight risk, nor that they had an individualized reason to re-detain him at an immigration-court hearing. Instead, they claim a statute, one never applied to him during his 21 months in the U.S., requires Petitioner’s *mandatory* (no-bond) detention.

This interpretation of Respondents’ statutory authority is both novel and wrong. Notwithstanding their statutory sleight of hand, Respondents’ actions clearly violated the Fifth Amendment. Re-detention without notice, individualized decision-making, and review by a neutral adjudicator cannot survive constitutional scrutiny. Respondents offer no reason to conclude otherwise.

Accordingly, Petitioner asks the Court to order his immediate release, or, in the alternative, an opportunity for a bond hearing.

FACTUAL BACKGROUND

The crucial facts are undisputed. Petitioner entered the United States without inspection on or about December 8, 2023. ECF 18-1. Respondents detained and later released Petitioner on his own recognizance “due to the lack of bed space” under 8 U.S.C. § 1226(a)(2)(B). ECF 18-2, 18-3. *Compare* ECF 18-4 (Petitioner released “due to humanitarian reasons and a lack of detention space”). Petitioner attended an immigration court hearing in September 2025 where Respondents detained him. ECF 18-4.

Respondents cite 8 U.S.C. § 1225(b)(2)(A) as authority for Petitioner’s re-arrest but also provide a “Notice of Custody Determination” showing that Petitioner was previously released in

December 2023 under Section 1226(a). ECF 18-3. Notably, Respondents do not dispute that they failed to provide Petitioner notice and an opportunity to be heard prior to his re-arrest.

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention.

Respondents are wrong about the statutory authority for Petitioner's detention. As stated by the District of Minnesota just this month, "[o]verwhelmingly, courts have rejected the interpretation offered by Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are 'inadmissible' because they entered the United States without inspection." *Belsai D.S. v. Bondi*, No. 25-cv-3682, KMM-EMB, 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025) (collecting authority). Consistent with this observation, at least three Courts in this District to consider the issue have recently rejected the government's position. *See Betancourt Soto v. Soto*, No. 25-cv-16200 (CPO), ECF 10 (D.N.J. Oct. 22, 2025) (rejecting argument that petitioner charged as being present without admission or parole is detained under § 1225(b)(2), and instead finding detention under § 1226(a)); *Mugliza Castillo v. Lyons*, No. 25-16219 (MEF), ECF 11 (D.N.J. Oct. 10, 2025) (same); *Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496, at *7–9 (D.N.J. Sept. 26, 2025) (holding noncitizen residing in the United States was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)). As have the strong majority of courts across the country. *See, e.g., Lopez Benitez v. Francis*, --- F.Supp. 3d ----, 2025 WL 2371588 at *9-12 (S.D.N.Y. August 13, 2025); *Kelly v. Almodovar et al.*, 25-cv- 06448 (AT), 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (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); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486,

2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).¹

A. The Record Demonstrates Petitioner’s Detention is Pursuant to Section 1226.

As acknowledged by Respondents, for *decades*, courts and Respondents themselves have recognized that the detention of individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a). *See* Answer, at 14 n. 3. Only in the past three months have Respondents begun to posit a totally new framework for detention. *See id.*

Petitioner’s case predates Respondents’ recent reimagining of the detention statutes. As Respondents concede, after they initially apprehended him in December 2023, DHS determined his custody was pursuant to § 1226. ECF 18-2, 18-3. That remains true today. Respondents offer no authority to alternate detention statutes as they please absent a change in a person’s criminal history or the posture of their removal proceedings. Nor does one exist. “[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226 It therefore follows that if [petitioner] was detained pursuant to one provision, he cannot be subject to the other.” *Lopez Benitez*, 2025 WL 2371588 at *4 (internal citations omitted).

Applying an entirely new statute of detention to someone previously released would raise serious retroactivity concerns. *See Francisco-Lopez v. Att’y Gen.*, 970 F.3d 431, 438 (3d Cir. 2020) (setting out five-factor test for retroactivity analysis). The new interpretation is an “abrupt departure” that has deprived Petitioner of his liberty—undisputedly a substantial burden. He had no opportunity to contest this classification, even as Respondents contend that their retroactive

¹ *See also Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, Doc. 20 at 7 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025); *Maldonado*, 2025 WL 2374411, at *13; *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025).

application of a new rule has caused his constitutional rights to simply vanish. Finally, any interest in uniformity cannot outweigh the burden imposed on Petitioner, particularly given Respondents' demonstrated willingness to "abrupt[ly] depart[] from well established practice." *See Francisco-Lopez*, 970 F.3d at 437. Retroactive application of Respondents' new rule is therefore inappropriate.

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

As a growing number of courts have concluded, Respondents' assertion that Petitioner is "lawfully" detained under Section 1225(b)(2) contravenes the plain meaning and structure of the relevant statutes.

By its own terms, Section 1225(b)(2) does not apply here. Courts must ensure "no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). While Respondents stress that Petitioner is an "applicant for admission," they ignore Section 1225(b)(2)'s qualifier that such individuals "are *seeking* admission"—language that "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at *6. But when Respondents arrested Petitioner, in December 2023, he was *already* inside the United States. His NTA confirms this: he was charged under 8 U.S.C. § 1182(a)(6)(A)(i) as someone *already present* in the U.S., and he was not designated as "arriving." ECF 18-1. And that remains true today. Because he was (and is) no longer in the act of "seeking" admission, he falls outside the scope of Section 1225(b)(2). *See Gonzalez v. Joyce*, 25 Civ. 8250 (AT), 2025 WL 2961626, at *4 (S.D.N.Y. Oct. 19, 2025) ("[B]ecause Gonzalez has already lived in the United States for over two years since his release, § 1225 no longer applies to him."). As observed just this month by Judge Farbiarz, "as a matter of plain-text reading, it is §1226(a) that applies to people situated like the Petitioner, not § 1225(b)(2)(A)." *See Mugliza Castillo*, No. 25-16219, ECF 11. *See also Betancourt Soto*, No. 25-cv-16200, ECF 10, at 14 n.4 ("Respondents' position does not interpret

the statute so much as invert it—a policy preference dressed in legal language and paraded as statutory faithfulness.”).

Respondents’ reliance on *Jennings v. Rodriguez* is misplaced for the same reason: far from directing that *all* applicants for admission are subject to 1225(b) detention, *see* Answer at 18, the Supreme Court there described classifications made “at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] *seeking to enter the country* is admissible,” at which time detention may be pursuant to either § 1225(b)(1) or (b)(2). *See* 583 U.S. 281, 287 (2018) (emphasis added). Applying those statutes to people inside the U.S. who already entered and are not “seeking” entry or admission at a border, stretches them beyond their bounds. As observed by Judge Hayden, “even if petitioner could be deemed ‘an applicant for admission,’ under [§ 1225\(a\)\(1\)](#), as respondents claim, [h]e does not meet the requirements of [§ 1225\(b\)\(2\)](#), because [h]e was never ‘seeking entry’ nor inspected by immigration officials.” *See Zumba*, 2025 WL 2753496, at *8.

Respondents’ substitution of Section 1225(b)(2) for Section 1226 also contravenes the fundamental rule that courts must give “effect, if possible, to every clause and word of a statute,” while respecting their overall logic and structure. *See United States v. Jackson*, 964 F.3d 197, 203 (3d Cir. 2020). The repeated use of “may” in § 1226(a) plainly signals Congress’ intent to establish a discretionary detention framework for those detained pursuant to an administrative warrant. Critically, Section 1226(a) also expressly excludes certain “criminal” noncitizens from its discretionary framework—but contains no exclusion for anyone else. “That express exception” to Section 1226(a)’s discretionary framework “implies that there are no *other* circumstances under which” detention is mandated for noncitizens detained pursuant to an administrative warrant. *See Jennings*, 583 U.S. at 300 (emphasis in original). *See also 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) renders superfluous a recent amendment to Section 1226. The Laken Riley Act² created Section 1226(c)(1)(E), which mandates detention when a noncitizen is (i) inadmissible for having entered without inspection, engaging in fraud, or lacking entry documents; “and” (ii) is implicated in certain crimes. 8 U.S.C. § 1226(c)(1)(E). The conjunction “and” means detention is mandatory only if both criteria are satisfied. But under Respondents’ theory, Section 1226(c)(1)(E) was a meaningless amendment since, in their view, “all noncitizens who have not been admitted” are already subject to mandatory detention under Section 1225(b)(2). *See Bostock*, 2025 WL 1193850, at *14. Because that is neither a permissible nor plausible reading of the statute, courts have rejected it. *See, e.g., Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025).

C. Respondents’ Caselaw Conforms to Petitioner’s Argument.

Respondents’ citation to Supreme Court precedent does not help their argument. *Cf. Lopez Benitez*, 2025 WL 2267803 at *8 (the court could not “identify any authority” supporting Respondents’ interpretation of Section 1225(b)); *Martinez*, 2025 WL 2084238 at *8 (same). As noted above, far from supporting Respondents’ new theory, the Supreme Court in *Jennings* noted that § 1225(b) custody applies to people at the border “seeking to enter” the U.S.—but it distinguished them from people who, like Petitioner, are already in the U.S. For the latter category, it stated that custody under § 1226 is the “default rule.” 583 U.S. at 289. As observed by Judge Hayden in applying *Jennings*:

Indeed, for nearly 30 years, [§ 1225](#) has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and [§ 1226](#) has applied to those aliens arrested within the interior of the United States. The *Jennings* Court explicitly adopts this distinction, describing [§ 1225](#) as the detention statute for noncitizens affirmatively

² Pub. L. No.119-1, 139 Stat. 3 (2025).

“seeking admission” into the United States, and [§ 1226](#) as the detention statute for noncitizens who are “already in the country.” [583 U.S. at 289](#). And although the *Jennings* Court characterizes [§ 1225\(b\)\(2\)](#) as the “catchall” detention provision for noncitizens who are “seeking admission,” it identifies [§ 1226\(a\)](#) as the “default rule” for the arrest, detention, and release of non-criminal aliens who are already present in the United States. *Id.* [at 303](#).

See Zumba, 2025 WL 2753496, at *11.

DHS v. Thuraissigiam furthermore lends Respondents’ statutory-switch no support. Unlike Petitioner, Thuraissigiam was detained only once, *while* seeking entry; he was never released from custody and never detained under § 1226(a) because he was placed into expedited removal proceedings, which triggered detention under 8 U.S.C. § 1225(b)(1)(A)(i), a statute not at issue here. *See DHS v. Thuraissigiam*, 591 U.S. 103 (2020). Moreover, Thuraissigiam did not challenge his detention. *See id.*

This Court should, like so many others, reject Respondents’ statutory-switch theory and conclude Petitioner is detained under § 1226(a).^{3 4}

³ The few district court cases cited by Respondents are all fundamentally distinguishable. The Petitioner in *Vargas-Lopez v. Trump* failed to demonstrate to the Court that he was ever arrested pursuant to 1226(a). *See* 8:25-cv-526, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025). Similarly, the Petitioners in *Chavez v. Noem* were never released from initial detention. *See* 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24, 2025). The primary issue in *Pena v. Hyde* was whether the petitioner in that case should remain in detention given that his I-130 petition had been approved at that time, and the decision included no discussion or analysis of the precise statute that applied. *See* No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025). Finally, the petitioner in *Pipa-Aquise v. Bondi* was placed in expedited removal proceedings and Section 1225(b)(2) was not at issue. *See* No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025).

⁴ *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), setting out the Executive Branch’s “newly-minted interpretation of [§ 1225\(b\)\(2\)\(A\)](#),” deserves no deference from this Court. *See Zumba*, 2025 WL 2753496, at *9 (“[The BIA’s current position is inconsistent with its earlier pronouncements which took the opposite position, and under *Loper*, the Court has no obligation to defer to the BIA’s view, particularly when that view has not ‘remained consistent over time.’”) (internal quotations and citation omitted). *See also Betancourt Soto*, No. 25-cv-16200, ECF 10 (“This Court owes no deference to an agency interpretation that conflicts with the statute’s unambiguous text.”).

II. Respondents Failed to Address the Constitutional Violations in Petitioner's Case

Beyond their statutory-switch, Respondents offer no credible defense for Petitioner's re-detention. As several courts have concluded, summary and purposeless detention is unconstitutional and merits immediate release. *See Zumba*, 2025 WL 2753496, at *11 ("For the reasons set forth above, petitioner's mandatory detention under § 1225 violates the INA and the Due Process Clause of the Fifth Amendment. The Court grants the writ of habeas corpus and orders respondents to release petitioner from detention within 24 hours."). *See also Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Lopez Benitez*, 2025 WL 2371588 at *9-12. This Court should find the same.

First, Respondents do not allege Petitioner's re-detention was due to danger or flight risks, the sole two lawful bases for immigration detention. Nor can they, since Petitioner's re-detention was part of a campaign with no individualized basis. Without a lawful justification, Petitioner's re-detention violated his right to substantive due process. *See Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023).

Second, Respondents do not claim they provided Petitioner notice or process before re-detaining him. 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, and as recent decisions confirm, the deprivation of Petitioner's liberty interest without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Zumba*, 2025 WL 2753496, at *10 ("Here, the first and second *Mathews* factors weigh heavily in petitioner's favor, as she has been deprived of her liberty, erroneously subjected to mandatory detention under [§ 1225](#) during her removal proceedings, and denied due process protections, including the right to seek bond. The

third *Mathews* factor also weighs in her favor as neither the government nor the public has a significant interest in detaining a long-term resident of the United States with no criminal history who is participating in cancellation of removal proceedings, which are civil in nature.”). *See also Betancourt Soto*, No. 25-cv-16200, ECF 10, at 15-17 (similarly applying *Mathews*). The risk of erroneous deprivation in the absence of any individualized custody determination is enormous—and the public interest in detention nonexistent. *See Zumba*, 2025 WL 2753496, at *10.

Rather than confront these facts, Respondents suggest that Petitioner has no constitutional right to challenge his detention. Statutorily, that is wrong. *See supra* at I(B). More damningly, it runs counter to over a century of Supreme Court caselaw holding that noncitizens *present* in the United States are entitled to the full panoply of constitutional rights, regardless of whether their presence is lawful or derives from a lawful admission. *See, e.g., Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Respondents’ elide these holdings by referencing the limited due-process rights of excludable noncitizens, Answer at 16-17, but excludability was a historical legal concept applicable to individuals who had not *entered* the U.S. *See Landon*, 459 U.S. at 28 (“only ‘entering’ aliens are subject to exclusion”). Those who have entered the U.S., like Petitioner, have due-process rights—irrespective of admission.

Respondents point again to *Thuraissigiam*. But, as explained above, that case did not involve a non-citizen like petitioner who, by Respondents’ own accounting, *had* a right to due process for 21 months until Respondents decided one day that he no longer did—despite no change in his procedural posture. Moreover, the petitioner in *Thuraissigiam* was not challenging his custody at all, but instead the procedures dictating *admission*. *See* 591 U.S. at 117 (noting petitioner “did not ask to be released”); *Padilla*, 704 F. Supp. 3d at 1171 (discussing this distinction).

Petitioner’s re-detention is reviewable and violates his constitutional rights.

III. Interim Release is Warranted.

The great and growing weight of authority in Petitioner’s favor shows he raises substantial claims. His detention is extraordinary because, in the absence of either danger or flight risk, it is purposeless. *See Mahdawi v. Trump*, 781 F. Supp. 3d 214, 232 (D. Vt. 2025) (considering “the conventional bail issues of risk of flight and danger to society” under this prong). Its context—as part of a campaign targeting asylum seekers as they comply with their obligation to attend immigration court, with the asserted basis shifting over time—is also extraordinary and alarming. *See id.*; *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 896 (D. Minn. 2025) (finding extraordinary circumstances including “shifting post hoc explanations to justify the arrest”). The habeas remedy itself is ineffective when a petitioner is unconstitutionally detained— be that for a moment, a day, a month or longer. As a result, because the Respondents “have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court [should not] construe the record to authorize his continued detention on that basis,” and the Court should order Petitioner’s immediate release and permanently enjoin Respondents from re-detaining him under § 1225. *See Betancourt Soto*, No. 25-cv-16200, ECF 10, at 17-18. *See also Zumba*, 2025 WL 2753496, at *11 (ordering immediate release).⁵

⁵ If the Court does not order an immediate release then, in the alternative, Respondents should afford Petitioner an immediate bond hearing. *See Mugliza Castillo*, No. 25-16219, ECF 11.

CONCLUSION

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

Dated: October 22, 2025

/s/ Michael Goldman
The Law Offices of Michael Z. Goldman
875 6th Avenue, Suite 1703
New York, NY 10001
212 901-3799
michael@mzglaw.com

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I, Michael Z. Goldman, certify that on October 22, 2025, I 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 District of New Jersey using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Michael Goldman
The Law Offices of Michael Z. Goldman
875 6th Avenue, Suite 1703
New York, NY 10001
212 901-3799
michael@mzglaw.com

Attorney for the Petitioner