

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

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PIERRE YVES DESGAZONS,  
Petitioner,

v.

Civ. No. 25-cv-000459-MRD-PAS

MICHAEL NESSINGER, Donald W. Wyatt  
Detention Facility, PATRICIA HYDE, Field  
Director, MICHAEL KROL, HSI New England  
Special Agent in Charge, TODD M. LYONS,  
Acting Director, U.S. Immigration and Customs  
Enforcement, and KRISTI NOEM, U.S. Secretary  
of Homeland Security,  
Respondents.

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**PETITIONER'S REPLY IN OPPOSITION TO RESPONDENTS' RESPONSE AND  
MOTION TO DISMISS AND PETITIONER'S REQUEST TO GRANT PETITION FOR  
HABEAS CORPUS**

**I. INTRODUCTION**

This case presents the questions of (1) whether the Immigration and Nationality Act requires that a noncitizen lawfully paroled into the United States by the Department of Homeland Security (“DHS”) and not detained by DHS upon arrival must nevertheless now be “returned” to the “custody from which he was paroled” after his parole status is abruptly terminated, (2) whether Respondents may detain a noncitizen in the interior of the United States, years after he entered on the basis of a legal fiction that he is still “seeking admission” and on the belated determination that he is “not clearly, and beyond a doubt entitled to be admitted,” and (3) even if this result is compelled by the Immigration and Nationality Act (“INA”), whether this application of the statutes to permit the categorical detention of all noncitizens with terminated humanitarian parole with no individualized custody determination is permissible under the due process clause of the U.S. Constitution.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

**A. Background and Current Custody**

The Petitioner, Mr. Pierre Yves Desgazons, is a Haitian national born on  Mr. Desgazons was paroled into the United States at Fort Lauderdale airport on August 16, 2023 pursuant to the Haitian Humanitarian Parole Process. The Haitian Humanitarian Parole Process was established in 2022 by DHS in an effort to provide a process “for Cubans, Haitians, Nicaraguans, and Venezuelans to come to the United States temporarily in a safe and orderly way.” See <https://web.archive.org/web/20250119213136/https://www.uscis.gov/CHNV>. If a noncitizen is paroled into the U.S. under this process, then the noncitizen “meet[s] the definition of a Cuban/Haitian entrant...[“CHNV”] [and] parole may automatically terminate if: You leave the

United States; or Your parole period expires. The [DHS] may also decide to terminate your parole for other grounds, such as violating any laws of the United States.” *Id.*

Through the Haitian Humanitarian Parole Process, Mr. Desgazons was granted work authorization and began working in the construction industry as a helper and he later started his own carpentry business. Before Immigration and Customs Enforcement (“ICE”) arrested Mr. Desgazons, he maintained consistent addresses in the Commonwealth of Massachusetts, most recently living in Malden, Massachusetts. Mr. Desgazons has lived an entirely peaceful life in the U.S., he does not have any criminal history and had not had any contact of any kind with law enforcement or the Department of Homeland Security (“DHS”) except when he was paroled into the U.S. in August 2023. In addition, Mr. Desgazons has significant familial ties in the U.S. as his mother lives in the U.S. and has an approved Form I-130 Petition for an Alien Relative on his behalf, and he is also helping raise his U.S. citizen daughter who is eight years old. Furthermore, Mr. Desgazons has a pending application for Temporary Protected Status.

As noted above, Mr. Desgazons was paroled into the U.S. in August 2023 pursuant to the Haitian Humanitarian Parole Process and he meets the definition of a CHNV Entrant. On June 12, 2025, DHS terminated Mr. Desgazons and other noncitizens’ CHNV Parole. On September 11, 2025, ICE officers encountered Mr. Desgazons in Saugus, Massachusetts, arrested him, and transferred him to the Wyatt Detention Facility in Rhode Island where he remains detained. On September 16, 2025, Mr. Desgazons, with counsel, requested a custody redetermination hearing with an Immigration Judge of the Chelmsford Immigration Court. That hearing occurred on September 25, 2025, and the Immigration Judge denied Mr. Desgazons’ motion for release on bond finding that he was an arriving alien and ineligible for bond, citing 8 C.F.R. § 1003.19(h)(2)(i)(B). [Chan Decl. ¶¶ 7–13, ECF No. 6-1).

Mr. Desgazons, through counsel, filed an Emergency Petition for a Writ of Habeas Corpus in the U.S. District Court for the District of Rhode Island on September 13, 2025. ECF No. 1. On October 1, 2025, Respondents filed their Response and Motion to Dismiss. ECF No. 3.

On October 7, 2025, Petitioner filed an asylum application with the Executive Office of Immigration Review (EOIR), and on October 10<sup>th</sup>, appeared at a master calendar hearing with removal defense counsel<sup>1</sup>. A hearing on the merits of Petitioner's asylum application has been scheduled for November 28<sup>th</sup>, 2025 at the Chelmsford, Massachusetts Immigration Court.

**B. Petition Posture**

The instant Petition pleads ongoing unlawful detention and seeks immediate release or, alternatively, an individualized bond hearing. [Petition for Writ of Habeas Corpus ¶¶ 1–7, 13–16, (ECF No. 1)]. In its Response and Motion to Dismiss, Respondents argue that upon revocation of his parole Mr. Desgazons' "immigration status reverted to the status that he held upon arrival ... at the border [sic] in August 2023: an arriving alien and applicant for admission to the United States." As such they argue that he is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). ECF 6 at 2, 11.

**III. QUESTIONS PRESENTED**

Two questions are at issue: (1) whether DHS may detain a Humanitarian-Parole entrant under 8 U.S.C. § 1225(b), and (2) even if DHS has statutory authority to detain Mr. Desgazons, whether the Fifth Amendment of the U.S. Constitution allows his continued civil detention without an individualized bond determination.

To determine these issues, the following questions must be answered: (1) whether the Immigration and Nationality act requires that a noncitizen lawfully paroled into the

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<sup>1</sup> Undersigned counsel is not representing Petitioner for his removal proceedings, but can access the custody segments of his Electronic Record of Proceedings on the DOJ ECAS, case filing system.

United States by the Department of Homeland Security and not detained by DHS upon arrival must nevertheless now be “returned” to the “custody from which he was paroled” after his parole status is abruptly terminated, (2) whether Respondents may detain a noncitizen in the interior of the United States, years after he entered on the basis of a legal fiction that he is still “seeking admission” and on the belated determination that he is “not clearly and beyond a doubt entitled to be admitted,” and (3) even if this result is compelled by the I.N.A., whether this application of the statutes to permit the categorical detention of all noncitizens with terminated humanitarian parole with no individualized determination is permissible under the due process clause of the U.S. Constitution.

The Petitioner, Mr. Desgazons, argues and will show that each question should be answered in the negative, and therefore, DHS may not detain a Humanitarian-Parole entrant under 8 U.S.C. § 1225(b), and even if DHS has such statutory authority to detain Mr. Desgazons, the Fifth Amendment of the U.S. Constitution does not allow his continued civil detention without an individualized bond determination.

#### IV. STANDARD OF REVIEW

A motion to dismiss a petition for a writ of habeas corpus under 28 U.S.C. § 2241 that challenges civil immigration detention prior to a final order of removal is governed by the same standard that applies to motions under Federal Rule of Civil Procedure 12(b)(6). The petition must include sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face; legal conclusions couched as facts do not suffice, and the court draws all reasonable inferences in the petitioner’s favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–57, 570 (2007); *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 12–13 (1st Cir. 2011). In resolving a Rule 12(b)(6) motion, the court may consider materials

susceptible to judicial notice without converting the motion to one for summary judgment. *Rodi v. S. New Eng. Sch. of Law*, 389 F.3d 5, 12 (1st Cir. 2004).

District courts in the First Circuit retain § 2241 jurisdiction over detention-only challenges that are independent of, and collateral to, removal proceedings; the channeling and claim-barring provisions of 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not foreclose such claims. *Aguilar v. U.S. ICE*, 510 F.3d 1, 9–11 (1st Cir. 2007); see also *Demore v. Kim*, 538 U.S. 510, 517–31 (2003) (pre-removal detention review under § 1226(c)); *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–51 (2018) (clarifying statutory framework while leaving constitutional challenges to detention for adjudication).

Section 2241 contains no statutory exhaustion requirement in this context; any exhaustion requirement is prudential and may be required or excused in the court's discretion, including where administrative remedies are inadequate, futile, or risk irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 144–49 (1992). Because exhaustion is an affirmative defense, dismissal at the pleading stage is appropriate only if the defense is apparent on the face of the petition (together with materials properly considered at Rule 12(b)(6)). *Gray v. Evercore Restructuring L.L.C.*, 544 F.3d 320, 324 (1st Cir. 2008).

In the pre-removal posture governed by 8 U.S.C. § 1226, the plausibility inquiry is informed by the governing due-process standards. For detainees held under § 1226(a), the First Circuit has held that, to continue detention, the government must carry the burden at a bond hearing—by clear and convincing evidence to justify detention based on dangerousness and by a preponderance of the evidence to justify detention based on flight risk. *Hernández-Lara v. Lyons*, 10 F.4th 19, 39–47 (1st Cir. 2021). For detainees held under § 1226(c), whether continued mandatory detention without a bond hearing is unconstitutional turns on individualized

circumstances; the First Circuit has rejected a categorical six-month rule while recognizing individualized habeas challenges to prolonged detention. *Reid v. Donelan*, 17 F.4th 1, 15–19 (1st Cir. 2021). Applying Rule 12(b)(6), a petition plausibly states a detention-only claim where, accepting the well-pleaded facts as true, it alleges that continued custody under § 1226 is unlawful under these principles—for example, because detention is being maintained without the constitutionally required allocation and quantum of proof at a bond hearing (§ 1226(a)) or because prolonged mandatory detention has become unreasonable under an individualized due-process analysis (§ 1226(c)).

V. **ARGUMENT**

**8 U.S.C. § 1225(b) Mandatory Detention Does Not Apply to CHNV Parole Entrants**

**Like Mr. Desgazons.**

1. **The parole statute’s “return to custody” clause presumes prior custody—  
which categorical parolees never had.**

INA § 212(d)(5)(A) authorizes DHS to parole an applicant for admission “temporarily,” but specifies that “when the purposes of such parole shall, in the opinion of the Secretary, have been served the alien shall forthwith return or be returned to the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). In Mr. Desgazons’ case he was neither detained at the border nor paroled from the “custody” of DHS as Respondents now contend. Rather, after following an application and vetting process set forth by the Department of Homeland Security, he was issued a travel document to allow him to board a flight to the US, then “presented himself at Fort Lauderdale airport and was paroled into the United States by United States Customs and Border Protection. ECF 6\_1 at ¶ 7. It is therefore not accurate to suggest that he was not in possession of a “valid entry document.” ECF 6 at 5. While it is true that he was not admitted with a visa but was

instead paroled pursuant to the CHNV parole program, this does not render him identically situated to an individual who appeared at a border checkpoint with no entry document and sought admission. See e.g., *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at \*2 (W.D.N.Y. July 16, 2025) (describing process for applying for and entering on CHNV parole). Petitioner concedes that under current regulations and case law, parole into the United States, does not prevent a finding of inadmissibility, or initiation of removal proceedings once the parole is terminated; nor does he contest that, as recently found by the First Circuit, Respondents are likely legally permitted to terminate parole on a categorical basis. See, *Ibragimov v. Gonzales*, 476 F.3d 125, 132 (2d Cir. 2007)<sup>2</sup>; *Doe v. Noem*, No. 25-1384, 2025 WL 2630395, at \*8 (1st Cir. Sept. 12, 2025).

However, the plain text of the parole statute directs that those whose parole is terminated shall “return or be returned to the custody *from which he was paroled.*” 8 U.S.C. § 1182(d)(5)(A) (emphasis added). This requires that the custody status of each noncitizen whose parole has expired must be determined by the status they had at the time of the grant of parole. See e.g., *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 192 (1st Cir. 1999) (The words of the statute are the first guide to any interpretation of the meaning of the statute. The usual maxim is that courts do not go beyond the text of the statute if the meaning is plain.) In the case of Mr. Desgazons, he was never in the custody of any federal agency. At most, he was examined by CBP officers prior to his lawful parole into the country, returning him to this status would, at most, permit the government to require his return to a port of entry to allow him to determine whether to seek admission again. He was certainly

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<sup>2</sup> While *Ibragimov* affirms Respondent’s authority to remove a non citizen whose parole is terminated, there is no indication that Mr. *Ibragimov* was subjected to mandatory detention for his multiyear removal proceedings or that that government considered that he must be “returned” to an immigration detention facility for the duration of his proceedings.

never in the custody of Immigration and Customs Enforcement or their agents nor held in any jail, or detention facility. Respondents cite to no authority for the lawfulness of arresting him inside the United States and subjecting him to mandatory detention in the interior of the country at a private prison.

The recent case of *Gomes v. Hyde* in the District of Massachusetts is instructive. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, Mr. Gomes initially entered the United States without any authorization or inspection. He was subsequently encountered by a CBP officer and detained. He was released from detention on his own recognizance. Over a year later ICE arrested Gomes on a warrant. The EOIR found that he was subject to mandatory detention under 8 U.S.C. 1225(b)(2). He challenges this decision through a writ of habeas corpus. *Id.*, at \* 1-4. The court found that when he first entered the United States, the government had authority to detain him under 8 U.S.C. 1225(b)(2), which they did. However, the court noted that the government chose not to detain him pending completion of removal proceedings but rather to release him on his own recognizance. When he was arrested over a year later on a warrant that identified a different detention authority namely 8 U.S.C. §§ 1226 and 1357. The court found that the government could no longer “return” him to the custody status he was in prior to release under 8 U.S.C. 1225(b)(2). Rather the court found that he could only be detained under 8 USC 1226, and as such he was entitled to an individualized custody determination. *Id.* 5-7.

The *Gomes* Court distinguished a recent BIA case, *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025). That administrative decision concerned a noncitizen that was arrested shortly after crossing into the United States, she was initially detained under 8 U.S.C. 1225(b)(2) but was later paroled under the same provision as Mr. Desgazons, 8 U.S.C. § 1182(d)(5)(A). After she was released on parole, the government learned that Ms. Li was “wanted in Spain for travel document

forgery and human smuggling crimes.” DHS served with a Notice to Appear, a document that initiates removal proceedings and automatically terminates parole. 2025 WL 1869299 at 7-8. (citing 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)). The BIA held that Ms. Li was held under 8 U.S.C. 1225(b)(2) and did not have access to a bond hearing before an immigration judge. Judge Kobick found the facts of Mr. Gomes’ case to be “totally different.” There was no indication that Ms. Li was detained on a warrant, therefore the only basis for her detention was the issuance of the NTA, and because she was detained by DHS prior to her grant of humanitarian parole, DHS was required to “return [her] to that status” pending the completion of removal proceedings. *Id.* at 7-8

From an equitable and even constitutional perspective, Mr. Desgazons is clearly at least as deserving of an individualized custody determination as Mr. Gomes. After all, unlike Mr. Gomes, he entered the United States pursuant to a program that required him to submit an application, pay a fee and obtain a sponsor to sign an agreement with the US government ensuring he would be able to support himself while in the United States. See generally, <https://www.globalrefuge.org/wp-content/uploads/2024/10/CHNV-Backgrounder.pdf> (describing application process for CHNV parole.) The program was also terminated prematurely based on a change in administration and not as a result of any negative action of Mr. Desgazons himself, who has by all accounts, done nothing while in the country that would give rise to any need to detain him during removal proceedings.

However, even from a purely legal standpoint, Mr. Desgazons case is also “totally different” than *Q. Li* where detention was mandated after termination of humanitarian parole. First Mr. Desgazons was arrested on a warrant that is identical to that served on Mr.

Gomes.<sup>3</sup> Mr. Desgazons was not served with a notice to appear until after he was detained. Second, as mentioned above, Mr. Desgazons, unlike Ms. Li was never in the custody of ICE, he therefore cannot be lawfully “returned” to that custody pursuant to 8 U.S.C. § 1182(d)(5)(A), but can only be detained on a warrant, under 1226 (a).

In short, in CHNV cases like those of Mr. Desgazons’, where parole was granted at ports of entry following advance vetting and inspection; entrants were not first held in DHS detention and then released on parole. Thus, there is no antecedent custody “from which” Mr. Desgazons can be “returned,” and § 1182(d)(5)(A)’s custody-return clause cannot itself supply authority to place him into § 1225(b) mandatory detention now.

2. **8 U.S.C. § 1225(b)(2)(A) requires an examining officer’s contemporaneous determination that the person is “seeking admission” and “not clearly and beyond a doubt entitled to be admitted”—which did not occur here.**

By its terms, 8 U.S.C. § 1225(b)(2)(A) applies only “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” No such determination exists in this record; to the contrary, DHS inspected and paroled Mr. Desgazons in 2023 after vetting, which is antithetical to a contemporaneous finding that he was “not clearly and beyond a doubt entitled to be admitted.” There is likewise no document showing that on September 11, 2025, he was examined as an arriving alien who was then “seeking

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<sup>3</sup> A true and correct copy of the warrant is attached to this motion as Exhibit 1 at page 52, which contains the complete record of proceedings for his immigration custody matter. (Removal and custody proceedings are separate, contain separate administrative records, and different counsel may appear for each.) 8 C.F.R. § 1003.19(d) (2025) (“[C]onsideration ... regarding custody or bond ... shall be separate and apart from, and shall form no part of, any ... removal hearing or proceeding”); EOIR, Immigration Court Practice Manual ch. 9.3(e)(4)–(5) (bond record of proceedings is kept separate from other proceedings and documents must be re-submitted in the bond ROP); 8 C.F.R. § 1003.17(a) (2025) (appearance may be entered for custody/bond only and that appearance “shall be separate and apart” from other proceedings, permitting different counsel); Matter of Guerra, 24 I. & N. Dec. 37, 40 n.2 (B.I.A. 2006).

admission.” See 8 C.F.R. § 1.2 (defining “arriving alien” as an applicant “coming or attempting to come” to the United States); 8 C.F.R. § 235.3(c)(1) (detention under § 1225(b) for “arriving alien[s]” placed in § 240 proceedings).

*Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*5 (S.D.N.Y. Aug. 13, 2025) a recent immigration detention habeas case, considers the plain text of the 1225 (b)(2)(A) and confirms that it identifies three conditions that must exist for the provision to apply. 2025 WL 2371588, at \*5 (S.D.N.Y. Aug. 13, 2025) (“for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’ ” (citing *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at \*6 (D. Mass. July 24, 2025)).

In the present case, Mr. Desgazons’ cannot be “seeking admission” perpetually because seeking admission is an active, present tense requirement that is distinct from the status of being an “applicant for admission.” The *Lopez* court analogizes the distinction in the statute between “seeking admission” and “applicant for admission” to the difference between a person without a ticket who is seeking entrance to a theater from one who is found inside the auditorium with no ticket. 2025 WL 2371588, at \*7 (S.D.N.Y. Aug. 13, 2025) (“For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as “seeking admission” to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” [or “seeking” “lawful entry”] at that point—one would say that they had entered unlawfully but now seek a lawful

means of remaining there.”) Importantly Respondents’ reading would render the “seeking admission” language in the statute entirely superfluous as under their reading anyone who is an “applicant for admission” is also forever “seeking admission.” *Id.*, at \* 6 (discussing canon against surplusage and citing cases.).

This reading of the statute, now adopted by the vast majority of District Courts to consider the issue, results in both “seeking admission” and “applicant for admission” performing independent work. “Applicant for admission” defines an individual who wishes to have an immigrant status in the United States, whether or not they are physically at the border, for example a noncitizen with a pending visa application at a consulate or a pending asylum application in the United States. People in this category may or may not be “seeking admission” and Respondents’ reading would suggest that their detention is mandatory from the moment they submit a visa application or begin refugee processing abroad. This makes no sense. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at \*9 (D. Mass. Aug. 19, 2025) (“Reading out ‘applicant for admission,’ as Respondents accuse the Court of doing, would produce a far less reasonable result—a statute that spoke only of non-citizens “seeking admission” would require DHS to take into custody foreign nationals applying to enter the United States at embassies abroad until their visa applications are resolved.) Conversely, a person “seeking admission” may not be “applicant for admission” as for example a legal permanent resident who presents themselves at a port of entry after a trip abroad is “seeking admission” in certain circumstances but is not an “applicant for admission” as their “application has already been approved. See. e.g. *id.*, at 9-10. (discussing 8 USC 12 1225(a)(3), which requires the inspection of “[a]ll aliens who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.”)

Mr. Desgazons remains an applicant for admission, with various pending applications with USCIS and the EOIR, however he is not “seeking admission” as he has already been present in the United States for over 2 years. The “legal fiction” of parole termination may allow him to be “charged” as a arriving alien in immigration court, but it does not extend to rendering him a permanent migrant waiting at the border for a CBP officer to allow him in whenever ICE chooses to detain him in the interior of the country

Courts have long read 8 U.S.C. § 1225 to govern those “seeking admission” at the threshold, while 8 U.S.C. § 1226 governs those “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). Following that familiar line, *Martinez v. Hyde* rejected recent efforts to recast nearly all non-admitted persons as subject to 8 U.S.C. § 1225(b)(2)(A) and explained that a charge of inadmissibility alone does not trigger mandatory detention for someone apprehended within the United States. 2025 WL 2084238, at \*6–\*9 (D. Mass. July 24, 2025).

In the instant case, ICE’s declaration states only that Petitioner is “in ICE custody pursuant to 8 U.S.C. § 1225(b)(1)” and that he was later served with an NTA charging INA § 1182(a)(7)(A)(i)(I). It does not identify any officer’s contemporaneous 8 U.S.C. § 1225(b)(2)(A) determination in 2023 or in 2025 that he was “seeking admission” and “not clearly and beyond a doubt entitled to be admitted.” Those omissions are dispositive: 8 U.S.C. § 1225(b) mandatory detention does not apply, and 8 U.S.C. § 1226(a)’s discretionary custody scheme—allowing a custody redetermination hearing (bond hearing)—does.

**B. Due Process Requires an Individualized Bond Hearing Under this Circuit’s Binding Precedent.**

Even if the Respondents reading of the statutory scheme is correct, and mandates detention without an individualized review, such an application of the law would violate due process as applied to Mr. Desgazons.

As an initial matter, Respondents misidentify the nature of Petitioner's due process claim. See ECF 6, at 15-16. This Petition is not challenging the process afforded in substantive removal proceedings. Nor is it asking the Court to assume jurisdiction of anything other than the claims challenging his detention, which it has clear authority to do. See, *supra* at 5. The Petition is challenging Respondents' decision to hold him in carceral detention for the length of his proceedings for no reason other than his decision to enter the country through humanitarian parole. Respondents appear to adopt the current administration's very narrow view of due process' application to noncitizens as they offer no constitutional defense of their detention authority other than summarizing their statutory argument. ECF 6, at 17-18.

Respondents' position that all non-admitted noncitizens lack constitutional due process protections beyond what is expressly provided by Congress is without basis in law. The decision they rely on for this conclusion concerns noncitizens who recently entered the United States and that decision expressly acknowledges that noncitizens who have 'established connections' in the United States have due process rights. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S. Ct. 1959, 1963-64, 207 L. Ed. 2d 427 (2020). It is undisputed that Petitioner has been present in the United States for years, The "legal fiction" that certain non-citizens are considered perpetual 'applicants for admission' under the Immigration and Nationality Act does not establish that such a fiction can be imported into the Constitution and allow the executive unbridled authority to effectuate unjustified and indefinite detention of persons physically present in the United States for years. See, *Thuraissigiam*, 591 U.S. at 193 ft 12. (Sotomayor, J., dissenting)

(noting that the Court's holding that non-citizens lack due process rights "regarding their application for admission" does not reach due process rights that do not involve their application for admission such as prolonged or arbitrary detention) ; see also, e.g., *Gomes v. US Dep't of Homeland Sec., Acting Sec'y*, 460 F. Supp. 3d 132, 145 (D.N.H. 2020) (finding that all persons within the United States have due process protections) (citing: *Zadvydas v. Davis*, 533 U.S. 678, 693, (2001))

In *Hernandez-Lara v. Lyons*, the First Circuit held that due process imposes significant restrictions on the government's ability to detain noncitizens in removal proceedings. 10 F.4th 19, 43 (1st Cir. 2021) ("As these and many other cases make clear, ours is a system in which even the most sensitive and critical exercises of power by the political branches can be constrained by the rights of the individual. In few instances are those constraints more necessary than when the government seeks to lock up individuals behind bars").

Ms. Hernandez Lara, a native of El Salvador entered the United States without inspection in 2013 and was taken into immigration custody in 2018. *Id.* at 24-25. The parties did not dispute that she was detained under 1226(a).<sup>4</sup> The issue in the case was whether the due process clause allowed the government to detain her *after providing* a hearing at which she bore the burden of proof to demonstrate that she was not a danger to the community or posed a risk of flight from immigration court proceedings, *Id.* at 27. After analyzing the three *Matthews* factors, the First Circuit found that due process requires the government to justify detention by proving that a

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<sup>4</sup> The government has since dramatically changed its view of the 1226 (a). See, e.g., *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at \*1 (D. Mass, Aug. 19, 2025) (this case is the latest in a growing number of challenges in this District, and across the country, to non-citizen detention arising out a decision by the Department of Homeland Security to radically alter its interpretation of the immigration statutes.); *Chogillo Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at \*8 (D. Me. Sept. 22, 2025) (discussing BIA precedent decision *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025))

noncitizen is a danger to the community by clear and convincing evidence, or a flight risk by a preponderance of the evidence. *Id.* 39–41

There is no colorable reason why this due process analysis allows the government to detain Mr. Desgazons without even an opportunity for him to carry the burden of proof regarding flight risk and danger. The interest of government in the power to detain and those of Mr. Desgazons in being free from imprisonment are legally indistinguishable from considered in *Hernandez Lara*.

Thus, the burden of proof is on the government to prove that Mr. Desgazons poses a danger to the community or poses a flight risk. The private liberty interest is substantial; parolees like Mr. Desgazons were affirmatively vetted and allowed to enter with DHS’s consent. The risk of error is acute if bond is categorically denied based on “arriving alien” labels untethered to any dangerousness or risk of flight finding. Further, the government’s countervailing interests are comparatively slight where it has already completed security screening and facilitated entry, and where it may demonstrate it need to detain specific individuals based on specific evidence at bond hearings. *Hernandez-Lara’s* balancing holding therefore does not permit detention of Mr. Desgazons absent an individualized bond determination.

In addition, *Hernandez-Lara* recognized that even individuals who entered without inspection are entitled to a bond hearing with the proper allocation and quantum of proof. 10 F.4th at 39–41. Individuals like Mr. Desgazons—screened and permitted entry on parole—are at least similarly situated for due-process purposes, and more favorably positioned than the 8 U.S.C. § 1226(c) “criminal alien” class addressed in *Demore v. Kim*, 538 U.S. 510 (2003).

Because 8 U.S.C. § 1225(b) does not apply and continued detention without an individualized hearing violates due process, the Court should order immediate release pending a bond hearing. See, e.g. Order, *Leon v. Noem*, 1:25-cv-1634-LMB/WEF- ECF 12.(WDVA, 2025)

(ordering that Petitioner “be released from custody, with all his personal property, pending his bond hearing before an IJ. [Petitioner] must live at the fixed address identified in his Proposed Release Plan and appear at the bond hearing once the government notifies him of its date time and location.”) At minimum, the Court should order an individualized bond hearing before an Immigration Judge (“IJ”) at which:

- a. The government bears the burden to prove that by clear and convincing evidence that Mr. Desgazons poses a danger to the community and that by a preponderance of the evidence Mr. Desgazons poses a flight risk;
- b. The IJ must consider alternatives to detention and the least restrictive conditions that will reasonably assure appearance and community safety;
- c. The IJ must consider Mr. Desgazons and his family’s ability to pay in setting any bond; and
- d. The IJ to issue any written findings.

**VI. CONCLUSION**

For the aforementioned reasons, the Petition for Writ of Habeas Corpus should be granted and Petitioner ordered released.

*Respectfully submitted,*

/s/Carl Hurvich/s/

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Dated: October 10 2025.

**CERTIFICATE OF SERVICE**

I, Carl Hurvich, do hereby certify that on October 10 2025, the *Petitioner's Reply to Respondents Response and Motion to Dismiss* was served on the registered participants as identified on the Notice of Electronic Filing (NEF) through the electronic ECF system and paper copies will be sent to those indicated as non-registered participants.

*Respectfully submitted,*

Dated: October 10, 2025

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