

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Ruben Abelardo ORTIZ-LOPEZ,

Petitioner,

v.

LaDeon FRANCIS, *et al.*,

Respondents.

Case No. 1:25-cv-7985

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

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INTRODUCTION

Petitioner Ruben Abelardo Ortiz-Lopez, a father of two children ages 11 and 12 years old, has been unlawfully detained since September 25, 2025. Respondents do not assert that he poses a danger or a flight risk, nor even that they had an individualized reason to redetain him at an immigration-court hearing last month. Instead, they claim a statute, one never applied to him during his 18 months in the U.S., now not only applies but requires Petitioner's *mandatory* detention.

This interpretation of Respondents' statutory authority is both novel and wrong. Notwithstanding their statutory sleight of hand, Respondents' actions clearly violated both the Fourth and Fifth Amendments. Re-detention without notice, individualized decisionmaking, and review by a neutral adjudicator cannot survive constitutional scrutiny. Respondents offer no reason to conclude otherwise. Instead, they urge that Petitioner be required to seek bond and administratively exhaust his chances there—but binding administrative precedent renders such a request futile. The substantial constitutional concerns he raises also counsel against any further delay in his release from unlawful custody.

Accordingly, Petitioner asks the Court to order his immediate release.

FACTUAL BACKGROUND

The crucial facts are undisputed. Petitioner entered the United States without inspection in March 2024. Respondents detained and later released him “on his own recognizance” under 8 U.S.C. § 1226(a)(2)(B). Harrington Decl. (ECF 10) at ¶ 6. Petitioner then moved to New York, where Respondents concede he was arrested on June 18, 2024 but never charged. Harrington Decl. at ¶ 10. Petitioner attended immigration court hearings in December 2024 and September 2025. As Petitioner left the latter hearing, Respondents detained him. *Id.* at ¶ 14. In doing so, an

ICE agent pushed Petitioner's wife against a wall and then to the ground, causing her to hit her head in front of her two children. *See* Pet'n at 12.

Respondents cite 8 U.S.C. § 1225(b)(2)(A) as authority for Petitioner's re-arrest but also provide an administrative warrant that cites authority under Section 1226(a). ECF 9-7. The warrant lists the "pendency of ongoing removal proceedings" as the sole cause for detention. *Id.* Notably, Respondents do not dispute that they provided Petitioner neither notice nor an opportunity to be heard prior to his re-arrest. While they allege that Petitioner "missed multiple virtual check-ins between May 29, 2024, and September 25, 2025," Harrington Decl. at ¶ 11, they also admit that they removed Petitioner's "ankle monitor" during that period on December 12, 2024.¹

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention.

Respondents are wrong about the statutory authority for Petitioner's detention. Like a growing number of courts, this Court should reject Respondents' atextual statutory interpretation and hold that Section 1226 still governs his detention. *See 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 Respondents offer no evidence that Petitioner missed several virtual check-ins, nor context for how many check-ins he did attend or what reason he offered for missing some virtual appointments. *See* Ex. A, Declaration of Monica Galarza Moreta (describing Petitioner attending numerous check-ins, including over 15 that she attended with him, and on occasion asking to reschedule virtual check-ins due to work). Regardless, Respondents do not claim these alleged missed check-ins formed the basis for Petitioner's re-detention. *Cf.* ECF No. 9-7; Resp. at 5 (detention was due to the pendency of ongoing proceedings).

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

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). *See* Pet’n at ¶ 23. Only in the past three months have Respondents begun to posit a totally new framework for detention. *Id.* at ¶¶ 21-22.

Petitioner’s case predates Respondents’ recent reimagining of the detention statutes. As Respondents concede, after they initially apprehended him in March 2024, DHS repeatedly determined his custody was pursuant to § 1226, ECF 9-7; Harrington Decl. at ¶ 6, 9, 12. 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, a point that Respondents conceded. 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 violate their right to due process and raise serious retroactivity concerns. *Obeya v. Sessions*, 884 F.3d 442, 445 (2d Cir. 2018) (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 application of a new rule has caused his constitutional rights to simply vanish. Resp. at 10-11. Finally, any interest in uniformity cannot outweigh the burden imposed on Petitioner, particularly given Respondents’ “demonstrated willingness to depart from [their] own precedent.”

Obeya, 884 F.3d at 449. 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, and it is at odds with historical practice.

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 v. Hyde*, 2025 WL 2084238, at *6. But when Respondents arrested Petitioner, in March 2024 and then in September 2025, 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 not designated “arriving.” ECF 9-2. Because he was no longer in the act of “seeking” admission, he falls outside the scope of Section 1225(b)(2). 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, Resp. at 6, 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). 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.

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. *Hechavarria v. Sessions*, 891 F.3d 49, 55 (2d Cir. 2018), *as amended* (May 22, 2018). 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 (citing A. Scalia & B. Garner, *Reading Law* 107 (2012)); *cf. 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). *Bostock*, 2025 WL 1193850, at *14. Because that is neither a

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

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' Case Law Conforms to Petitioner's Argument.

Respondents cobble together cases from other contexts to support their erroneous application of § 1225(b)(2). But no case they cite stands for the proposition they claim. *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). 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.

Respondents’ reliance on the “entry fiction” is equally misplaced. Resp. at 7 (citing *United States ex. rel. Kordic v. Esperdy* 386 F.2d. 232, 235 (2d Cir. 1967)). The entry fiction, by definition, concerns individuals who have not *entered* the U.S., which Petitioner—who was living in New York City with his family when detained—clearly has. Its application to individuals living here after receiving parole under 8 U.S.C. § 1182(d)(5), *see* Resp. at 10 (citing cases relating to parolees), is irrelevant: Petitioner was not paroled, so *Kordic* is inapplicable.

DHS v. Thuraissigiam lends Respondents’ statutory-switch no support. Resp. at 7-9, 11 (citing 591 U.S. 103, 140 (2020)). 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. Moreover, he did not challenge his detention.

This Court should, like so many others, reject Respondents' statutory-switch theory and conclude Petitioner is detained under § 1226(a).

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

Beyond their statutory-switch, Respondents offer no defense for Petitioner's redetention. As several courts have concluded, summary and purposeless detention is unconstitutional and merit immediate release. *See, e.g., Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627, 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 redetention was due to danger or flight risks, the sole two lawful bases for immigration detention. *Cf. Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Nor can they, since Petitioner's re-detention was part of a campaign with no individualized basis. Notably, Respondents removed Petitioner's ankle monitor almost one year ago—which shows an *absence* of flight-risk concerns. Harrington Decl. at ¶ 12. Pet'n at ¶ 13-15; 42. Without a lawful justification, Petitioner's redetention 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 redetaining him. The Second Circuit has held that the well-known test for constitutionality of process set forth in *Mathews v. Eldridge*, is applicable to due-process challenges, *see* Pet'n at ¶ 27 (*citing* 424 U.S. 319, 335 (1976)), yet Respondents fail to address that test at all. As caselaw confirms, 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 Valdez*, 2025 WL 1707737,

at *4; *Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Martinez*, 2025 WL 2084238, at *9. 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 13-14, without addressing the crux of Petitioner's argument. An administrative arrest provides a valid basis for detention of a noncitizen, Resp. at 12-13 (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—here, “the pendency of ongoing removal proceedings,” ECF 9-7, commenced *prior* to Petitioner's earlier release—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).

Rather than confront these violations, Respondents contend 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, Resp. at 11—but excludability was a historical legal concept applicable to individuals who had not *entered* the U.S. *Landon*, 459 U.S. at 28 (“only ‘entering’ aliens are subject to exclusion”); *Correa v. Thornburgh*, 901 F.2d 1166, 1171 (2d Cir. 1990) (petitioner was

subject to exclusion, rather than deportation, because she “had not effected an ‘entry’”). Those who have entered the U.S., like Petitioner, have due-process rights—irrespective of admission. To the extent some courts have held otherwise, those holdings were tied to the unique status of individuals paroled into the U.S. under 8 U.S.C. § 1182(d)(5). Resp. at 11-12 (collecting cases). Petitioner was not paroled into this country: he was released on recognizance under § 1226(a). *See Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (discussing distinctions). But even if he had been paroled, that would not alter this basic recourse to the due-process clause. *See, e.g., Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *12 (S.D.N.Y. Sept. 12, 2025) (ordering release of a redetained noncitizen initially paroled into the U.S.); *Lopez*, 2018 WL 2932726, at *7 (same); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (same).

Respondents counter by pointing to *Thuraissigiam* and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). But those cases stand for the same point. *See Mezei*, 345 U.S. at 212 (“[noncitizens] who have once passed through our gates, *even illegally*, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”) (emphasis added). And in any event, neither dealt with a petitioner who, by Respondents’ own accounting, *had* a right to due process for 18 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. 591 U.S. at 117 (noting petitioner “did not ask to be released”); *Padilla*, 704 F. Supp. 3d at 1171 (discussing this distinction). The thicket of differences from *Mezei* is yet greater. Petitioner 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.*

Petitioner's redetention is reviewable and violates his constitutional rights.

III. Petitioner's APA claim is not foreclosed by *Trump v. J.G.G.*

Respondents also seek to avoid Petitioner's APA claim by insisting it is foreclosed by *Trump v. J.G.G.*, 145 S.Ct. 1003 (2025), and arguing such a claim must be brought in habeas. Resp. at 14. But *J.G.G.* gets Respondents nowhere, since it addressed challenges under the Alien Enemies Act—a unique wartime statute with unique judicial review limitations. *J.G.G.*, 145 S. Ct. at 1005 (“[c]hallenges to removal under the *AEA*...must be brought in habeas.”) (emphasis added); *see id.* at 1007 (dissent) (characterizing the majority as holding that “legal challenges to an individual's removal under the Alien Enemies Act must be brought in habeas petitions in the district where they are detained”). Moreover, “the Supreme Court did not specifically state that, if a petitioner challenges his detention through a habeas petition, the petitioner cannot also assert an APA claim.” *Materano*, 2025 WL 2630826, at *16. Accordingly, *J.G.G.* does not preclude Petitioner's APA claim.

IV. Exhaustion is Unnecessary Because Respondents' Administrative Precedent Forecloses Petitioner's Eligibility for Bond.

Respondents next urge the Court to sidestep the significant constitutional issues in this case by imposing a prudential exhaustion requirement. Resp. at 17-20. But this argument rings hollow: Respondents' precedent mandates that unadmitted individuals are now uniformly *ineligible* for bond. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).³ Exhaustion is futile.

³ Respondents point to cases where district courts required exhaustion, Resp. at 18-20, but they pre-date *Yajure Hurtado*. At the time, Respondents *conceded* that the petitioners were detained under § 1226(a).

Even were that not the case, a prudential exhaustion requirement is inappropriate here for the additional reason that Petitioner has raised serious constitutional questions, as explained *supra* at II. *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (citations omitted). It is not for Petitioner, wrongly deprived of his liberty, to spend weeks or months in detention attempting to correct their error.

V. Interim Release is Warranted.

Finally, Respondents oppose Petitioner's interim release pursuant to *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). The great and growing weight of authority in Petitioner's favor shows he raises substantial claims. *Supra* at I; *see also Vasquez Salgado v. Francis*, No. 25-CV-6524 (VEC), 2025 WL 2806757, at *4 (S.D.N.Y. Oct. 1, 2025). His detention is extraordinary because, in the absence of either danger or flight risk, it is purposeless. *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. Accordingly, Petitioner seeks interim release should this Court require more time to consider his underlying claims.

CONCLUSION

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

Dated: October 9, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,498 words.

CERTIFICATE OF SERVICE

I, Harold A. Solis, certify that on October 9, 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 Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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