

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Xiaoquan CHEN, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Judith ALMODOVAR, Acting Director of the )  
 New York City Field Office of Immigration and )  
 Customs Enforcement; Kristi Noem, Secretary )  
 of the Department of Homeland Security; )  
 Pamela Bondi, Attorney General, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

Case No.: 25-8350 (MKV)

**PETITIONER’S REPLY TO RESPONDENTS’ OPPOSITION  
TO PETITION FOR WRIT OF HABEAS CORPUS**

The facts of this case are undisputed. Roughly two years ago, Immigration and Customs Enforcement (“ICE”), a component of the Department of Homeland Security (“DHS”), released Petitioner “on his own recognizance” so that he could apply for asylum before an immigration judge (“IJ”). *See* Dkt. No. 10 at 1 (Government Memorandum of Law). It did so pursuant to section 236 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226. *See* Dkt. No. 1 at ¶ 12 (Petition).<sup>1</sup> Petitioner subsequently complied with all the terms of said release—he diligently pursued his asylum case in immigration court, he stayed out of trouble, and he reported for examination whenever ICE said to. *See* Dkt. No. 1 at ¶¶ 1–2; Dkt. No. 10 at 6. On October 8, 2025, when Petitioner appeared for an ICE appointment—in compliance with the terms of his release—ICE decided to detain him, claiming based on a novel legal theory that he was *actually* subject to

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<sup>1</sup> ICE has not seen fit to provide the Court with a copy of this release paperwork, *see generally* Dkt. No. 9 (Government Return), but its general content is not subject to dispute, *see* Sample ICE Form I-220A, Order of Release on Recognizance, *available at* [www.ice.gov/doelib/detention/checkin/I\\_220A\\_OREC.pdf](http://www.ice.gov/doelib/detention/checkin/I_220A_OREC.pdf) (accessed Nov. 6, 2025).

mandatory detention under INA § 235, 8 U.S.C. § 1225. *See* Dkt. No. 10 at 6. Petitioner immediately sought a writ of habeas corpus, arguing that his unexplained re-detention violated the Constitution as well as the INA, and while this case has been pending, ICE transferred him first to New Jersey, and later to Mississippi. *See id.*<sup>2</sup>

In response to the current petition for a writ of habeas corpus, the Government falls back on two familiar arguments. First, it rehashes a statutory argument that has been rejected by every judge in this district to have heard it—claiming, notwithstanding decades of practice, a tidal wave of contrary authority, and even its own documentary evidence, that Petitioner is subject to mandatory detention under 8 U.S.C. §1225, rather than permissive detention under § 1226. *See* Dkt. No. 10 at 7–11. Second, it argues that Petitioner—who has resided in the United States for nearly two years with official authorization—has no rights whatsoever under the Fifth Amendment’s Due Process Clause, a claim which it grounds primarily in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *Dep’t of Homeland Sec’y v. Thuraissigiam*, 591 U.S. 103 (2020). *See* Dkt. No. 10 at 11–16. As a last resort, perhaps in recognition of the fact that it has yet to persuade a single judge in this district to adopt either of the aforementioned arguments, the Government asks this Court to grant the Petition only in part. *See* Dkt. No. 16–19.

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<sup>2</sup> ICE’s practice of playing shell games with its detainees is so pervasive that the Executive Office for Immigration Review (“EOIR”) was forced to invent a new procedural mechanism to accommodate it. *See* EOIR Acting Director Sirce E. Owen, *PM 25-49: Clerical Transfers of Bond Redetermination Requests*, at 1–2 (Sep. 15, 2025) (“Aliens detained by DHS may be transferred to more than one DHS detention facility during the span of their proceedings, and in some cases these transfers occur before a requested bond hearing is scheduled. In such situations, an alien has requested a bond redetermination before an Immigration Court with presiding authority over the alien’s current place of detention, and, before that alien’s bond hearing is held, he or she is transferred by DHS to a different detention facility that is outside of that particular Immigration Court’s geographic area of responsibility. Accordingly, this Policy Memorandum (PM) provides Immigration Courts with operational guidance on how these pending bond redetermination requests should be processed. Upon receipt of a Form I-830 as evidence that DHS has transferred an alien to a detention facility outside of the geographic area of responsibility of the Immigration Court where the alien’s bond redetermination request is pending, the alien’s bond redetermination request must remain pending and will be ‘clerically transferred’ to the appropriate presiding Immigration Court.”), available at [www.justice.gov/eoir/media/1414836/](http://www.justice.gov/eoir/media/1414836/).

**I. The Government’s novel claim that individuals like Petitioner are subject to section 1225 mandatory detention has been rightly rejected by every court in this district to consider it.**

First, we address the Government’s argument that section 1225 mandatory detention applies to an individual, like Petitioner, who was released into the United States years ago pursuant to section 1226. As the Government seemingly concedes in a footnote, the argument is not historically a winning one. *See* Dkt. No. 10 at 9 n.3 (“Some courts, including in this district, have endorsed [Petitioner’s] argument.”). To call the Government’s concession an understatement would itself be an understatement.

While the Government admits that “[s]ome courts” have disagreed with it, the fact is that the overwhelming majority have emphatically rejected the Government’s novel mass detention theory. *See, e.g., Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at \*12 (E.D.N.Y. Oct. 6, 2025) (“Indeed, in the approximately two and one-half-months since Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected Respondents’ novel and illogical interpretation of the INA.” (citing *Lopez Benitez*, 2025 WL 2371588; *Mata Velasquez*, 2025 WL 1953796; *Lepe v. Andrews*, No. 25 Civ. 1163 (KES), 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Barrera v. Tindall*, No. 25 Civ. 541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser*, No. 25 Civ. 6487 (PCP), 2025 WL 2650637 (N.D. Cal. Sep. 16, 2025); *Pizarro Reyes v. Raycraft*, No. 25 Civ. 12546 (RJW), 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025); *Doe v. Moniz*, No. 25 Civ. 12094 (IT), 2025 WL 2576819 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No. 25 Civ. 2180 (DMS), 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); *Lopez-Campos v. Raycraft*, No. 25 Civ. 12486 (BRM), 2025 WL 2496379 (E.D.

Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 25 Civ. 1093 (JE), 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *dos Santos v. Noem*, No. 25 Civ. 12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. 25 Civ. 2157 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. Jul. 7, 2025)); *see also Echevarria v. Bondi*, No. 25 Civ. 3252 (DWL), 2025 WL 2821282, at \*4 (D. Ariz. Oct. 3, 2025) (relying on some of the same cases as *Hyppolite*, while also citing *Hasan v. Crawford*, 25 Civ. 1408 (LMB), 2025 WL 2682255, at \*9 (E.D. Va. Sep. 19, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); and *Vazquez v. Feeley*, No. 25 Civ. 1542 (RFB), 2025 WL 2676082, at \*16 (D. Nev. Sep. 17, 2025)).

And that headcount includes every court in this district to have considered the issue. *See J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), 2025 WL 3040142, at \*2 (S.D.N.Y. Oct. 28, 2025) (“Across the country, the government has repeatedly engaged in the same behavior displayed here. It has detained noncitizens pursuant to § 1226(a), then, only afterward, argued that they were instead detained under § 1225(b)(2) and ineligible for bond. That has led to a raft of decisions, most of which have rejected the government's position. They are so numerous that only a handful are cited here as illustrative examples.” (citing some of the above cases, as well as *Martinez v. Hyde*, No. 25 Civ. 11613 (BEM), 2025 WL 2084238 (D. Mass. Jul. 24, 2025); and *Guerrero Orellana v. Moniz*, No. 25 Civ. 12664 (PBS), 2025 WL 2809996 (D. Mass. Oct. 3, 2025)); *see also Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at \*4 (S.D.N.Y. Oct. 19, 2025) (citing, *inter alia*, *Lopez Benitez, supra*; *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831, at \*3 (S.D.N.Y. Aug. 19, 2025)).

The Government “respectfully disagrees with those decisions.” Dkt. No. 10 at 9 n.3.<sup>3</sup> It’s free to do so, of course. And “[t]o be sure, not *every* court has rejected [its] argument—the government identifie[s] two that adopted it,” *J.G.O.*, *supra* (emphasis in original) (citing *Chavez v. Noem*, No. 25 Civ. 2325 (CAB), 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351 (D. Neb. Sep. 30, 2025)); *see also* Dkt. No. 10 at 9 n.3 (citing *Chavez* and *Vargas Lopez*, *supra*).

But, as a commanding majority of courts have found, the Government’s novel interpretation of section 1225 is a textual wreck. It reads entire phrases (*i.e.*, “seeking admission,” and “or otherwise seeking admission”) out of the statute. *J.G.O.*, 2025 WL 3040142, at \*3. It ignores context, including by “nullify[ing] a statute” (*i.e.*, the Laken Riley Act<sup>4</sup>) “that Congress enacted this very year.” *Artiga*, 2025 WL 2829434, at \*7 (quoting *Gomes*, 2025 WL 1869299, at

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<sup>3</sup> Judge Woods declined to reach the statutory issue in another case, finding that the habeas petitioner’s rights there had been violated regardless of whether section 1225 or 1226 applied. *See Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 277452, at \*1 (S.D.N.Y. Sep. 28, 2025). For what it’s worth, the Government “respectfully disagrees with” that decision, too. Dkt. No. 10 at 16 n.5.

<sup>4</sup> The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (“LRA”), amended section 1226(c) to provide for the mandatory detention of any individual who both “is inadmissible under paragraph (6)(A), (6)(C), or (7) of [INA] section 212(a),” 8 U.S.C. § 1182(a), “and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another.” LRA § 2. This new ground of section 1226(c) mandatory detention forms the core of the LRA, which consists entirely of this new mandatory detention ground, *see* LRA § 2, together with a series of jurisdictional amendments designed to waive sovereign immunity in order to permit state attorneys general to sue the federal government over its release decisions, *see id.* § 3.. But if we accept the Government’s reading of section 1225, then individuals covered by at least two of the cross-referenced paragraphs of section 1182(a) would *already* have been subject to mandatory detention under section 1225(b). *See Gomes*, 2025 WL 1869299, at \*7 (“After all, a noncitizen who is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), or who lacks requisite documentation, *id.* § 1182(a)(7), is unlikely to prove to an examining immigration officer that he ‘is clearly and beyond a doubt entitled to be admitted.’” (quoting 8 U.S.C. § 1225(b)(2)(A))). In fact, on the Government’s theory, such individuals could not be subject to 1226 detention at all. *See Matter of Q. Li*, 29 I&N Dec. 66, 68, 69 n.4 (BIA 2025) (“[F]or aliens arriving in and seeking admission into the United States . . . , section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention . . . [and] [o]nce an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a)[, 8 U.S.C. § 1226(a)].”).

\*7) (alteration in *Artiga*). And, of course, it's contrary to three decades of agency practice and precedent. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at \*7 & n.8 (“The implementing regulations—which were ‘promulgated mere months after passage of the statute’ and have remained consistent over time—further underscore the active nature of the term ‘seeking admission’ in § 1225(b).” (quoting *Martinez*, 2025 WL 2084238, at \*6, which in turn cites *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024))).

If all that weren't enough, the “Respondents['] own documentation provided to [Petitioner] on the date of his arrest expressly stated that his detention was authorized under the authority Congress provided to DHS under § 1226(a), *not* § 1225(b)(2)(A).” *Hyppolite*, 2025 WL 2829511, at \*8 (emphasis in original); *see also* Dkt. No. 9-3 (arrest warrant citing INA § 236, 8 U.S.C. § 1226). “[W]hile . . . this history is not controlling, it certainly is relevant to the Court's assessment of the credibility and good faith of ‘Respondents’ new position as to the basis for [Petitioner's] detention, which was adopted post hoc and raised for the first time in this litigation.” *Hyppolite*, 2025 WL 2829511, at \*8 (cleaned up) (quoting *Lopez Benitez*, 2025 WL 2371588, at \*5); *see also J.U.*, 2025 WL 2772765, at \*6 (“[T]he use of a warrant . . . to arrest and detain Petitioner is further evidence that Petitioner could only be detained pursuant to § 1226(a).”).

**II. Petitioner's unjustified re-detention violated due process, and the Government's arguments to the contrary are unavailing.**

We turn next to the Government's assertion that Petitioner, who has lived in the United States for two years with official authorization, has no due process rights whatsoever under our Constitution. Its argument is internally contradictory, inapposite in the context of a non-parolee, and inconsistent with the Constitution.

**a. The Government’s argument is at odds with its own interpretation of the Supreme Court’s *Mezei* decision.**

With respect to due process, the Government begins its argument by begging the precise question at issue, claiming that “[b]ecause *Petitioner is deemed an applicant for admission and thus is treated for constitutional purposes as if stopped at the border*, he is lawfully detained pursuant to Section 1225(b).” Dkt. No. 10 at 11 (emphasis added). No authority is cited for the italicized proposition. That probably makes sense, because it isn’t true. Indeed, on the very next page, the Government “recognize[s] that ‘once passed through our gates, even illegally,’ aliens ‘may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.’” *Id.* at 12 (quoting *Mezei*, 345 U.S. at 212). But Respondents’ stated position is that noncitizens who “pass[] through our gates . . . illegally” categorically *are* “applicants for admission.” *See Yajure Hurtado*, 29 I&N Dec. at 228 (“Aliens . . . who surreptitiously cross into the United States remain applicants for admission.”). So, the Government’s serpentine argument promptly devours its own tail.

**b. Moreover, its argument only applies in the context of an individual released on parole, and Petitioner is not a parolee.**

In any event, the argument doesn’t even make sense to bring here, because Petitioner isn’t a parolee. The Government’s argument relies on the legal fiction, described in more detail below, that certain noncitizens in the United States are treated as if they remained “on the threshold of initial entry.” Dkt. No. 10 at 12 (quoting *Mezei, supra*). By regulation, the Government applies this legal fiction to parolees. *See* 8 C.F.R. § 1.2 (“An arriving alien remains an arriving alien even if paroled.”). As the Government notes, courts have sometimes adopted this understanding, at least where the issue has been conceded. *See, e.g., Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648

(S.D.N.Y. 2018) (“Although Petitioner here was paroled into the United States in 2000 and (unlike Mezei) has been continuously present in the United States since that date, the parties agree—indeed, Petitioner’s counsel conceded during oral argument—that Petitioner remains ‘at the threshold of initial entry’ for immigration purposes.”). But all agree that Petitioner here *is not a parolee*. Dkt. No. 10 at 6; Dkt. No. 1 at ¶ 12 & n.1.

- c. **Finally, the argument is incompatible with the established consensus that when the Government grants a noncitizen release from custody in the United States, this gives rise to a constitutionally protected liberty interest in the continuation of that person’s freedom.**

As alluded to above, the Government’s argument rests entirely on the fact that, “[a]gainst the general rule that due process applies to all persons, courts have recognized an exception known as the ‘entry fiction.’ Under the entry fiction, an applicant for admission to the country is treated as if he were stopped at the border for the purposes of his application for admission. In other words, while a person seeking legal entry into the United States may be granted physical entry into the country pending the determination of his application for admission, the mere fact of his physical presence within our borders provides him no greater constitutional protection *as to his application* than if he were outside the country. This narrowly-tailored legal fiction exists to accommodate the political branches’ broad prerogative to exclude.” *Al-Thuraya v. Warden, Orange County Correctional Facility*, No. 25 Civ. 2582 (AS), 2025 WL 2858422, at \*3 (S.D.N.Y. Oct. 9, 2025) (citations omitted, emphasis in original).

Perhaps most famously, the Supreme Court has applied the entry fiction in *Mezei* and later *Thuraissigiam*. In *Mezei*, a lawful permanent resident returning to the United States from the Soviet Union “was ordered excluded from the country (on national security grounds) and was

detained solely because no other country would take him. Mezei had been conclusively ‘denied entry’—he had exhausted all avenues of review. In that context, the Supreme Court said that ‘[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.’ The Court focused on the fact that a release from detention would undermine the Government’s determination to exclude Mezei.” *Id.*, at \*4 (quoting *Mezei*, 34 U.S. at 212, 216). “Similarly, in *Thuraissigiam*, the Court rejected an arriving noncitizen’s claim for review of the agency’s removal decision, which was based on an asylum officer’s finding that he lacked a credible fear of persecution. In that context, the Court stated that ‘an alien in respondent’s position has only those rights regarding admission that Congress has provided by statute.’” *Id.* (quoting 591 U.S. at 140) (second emphasis in *Al-Thuraya*).

Petitioner “stands in a different position. Unlike Mezei and Thuraissigiam, [Petitioner] has not been definitively ‘denied entry.’” *Id.* Rather, he was released into the United States so that he could apply for asylum, and he has done so. “The Government lacks the authority to remove [him] until all of that gets hashed out. In other words, [Petitioner] has neither been admitted (*i.e.*, granted asylum) nor excluded (*i.e.*, denied asylum . . . ). So[,] the concern animating the entry fiction exception—that is, the political branches’ authority to legally admit or exclude noncitizens—doesn’t apply here. Indeed, the due-process claim [Petitioner] advances doesn’t concern his application at all, just the legality of his detention while that application is being reviewed.” *Id.* “Because the entry-fiction exception is inapplicable . . . , what’s left is the general rule: ‘[A]ll persons, aliens and citizens alike, are protected by the Due Process Clause.’” *Id.* (quoting *Mathews v. Diaz*, 426 U.S. 67, 78 (1976)) (second alteration in *Al-Thuraya*).<sup>5</sup>

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<sup>5</sup> As it did in *Al-Thuraya*, here “the Government cites two cases pointing in the opposite direction, *Poonjani v. Shanahan*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018), and *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020).” *Id.*; see also Dkt. No. 14, at 12. “*Poonjani* and *Mendez Ramirez* relied on *Mezei*, but both elided the crucial differences between applicants for interim relief . . . , and individuals conclusively

Contrary to the Government’s suggestion, *see* Dkt. No. 10 at 15, Judge Subramanian’s decision in *Al-Thuraya* is far from an outlier. Indeed, Judge Liman agreed with its reasoning in a case decided not one week ago. *See Rojas Acevedo*, 2025 WL 3034183, at \*5. And there exists broad-based support, including in this district, for the proposition that an individual who has been “deprived of his physical liberty, which had previously been granted,” has a “clearly established” “liberty interest” which cannot be infringed without due process. *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at \*11 (S.D.N.Y. Jun. 12, 2018); *see also Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*2 (S.D.N.Y. June 18, 2025) (“[N]oncitizens have a liberty interest in continued freedom from civil immigration confinement.”).

For example, “in *Pinchi v. Noem*, the Northern District of California adjudicated the habeas petition of a noncitizen paroled into the United States and [similarly] held that ‘even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody[,] she has a protected liberty interest in remaining out of custody.’” *Rojas Acevedo*, 2025 WL 3034183, at \*5 (quoting No. 25 Civ. 5632, 2025 WL 2084921, at \*3 (N.D. Cal. Jul. 24, 2025)). These “cases vary in their facts and reasoning, but at base, all hold that a non-admitted noncitizen is not precluded from seeking the protections of the Due Process Clause where they are granted limited status in the country by the Government and that status was revoked without notice. Put differently, a noncitizen who is neither admitted nor denied, but who

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denied entry like *Mezei*. As . . . explained above, the former, as opposed to the latter, have not been definitively denied entry to the country, have pending claims to stay here, and are not seeking review—directly or indirectly—of any decision to exclude them. Those differences go to the heart of the Supreme Court’s due-process holdings. Under the constitutional interpretation adopted by *Poonjani* and *Mendez Ramirez*, ‘the Government could permanently detain arriving aliens at detention facilities on the mainland under the fiction that such persons were not in the United States, no matter how long, arbitrary, or capricious such detention. . . . Neither the Supreme Court, the Second Circuit, nor . . . any circuit court, has endorsed this outcome based on *Mezei*.’” *Id.* at \*5 (quoting *Birch v. Decker*, No. 17 Civ. 6769, 2018 WL 794618, at \*6 (S.D.N.Y. Feb. 7, 2018)); *see also Rojas Acevedo v. Almodovar*, No. 25 Civ. 7189 (LJL), 2025 WL 3034183, at \*6 n.5 (S.D.N.Y. Oct. 30, 2025) (similarly distinguishing *Poonjani* and *Mendez Ramirez*).

is granted permission to live in the United States, is protected by the Due Process Clause.” *Id.*, at \*6 (citing *Lopez Benitez v. Francis*, 2025 WL 2371588, at \*9 (S.D.N.Y. Aug. 13, 2025); *Valdez*, 2025 WL 1707737, at \*2; *Kelly v. Almodovar*, 2025 WL 2381591, at \*3 (S.D.N.Y. Aug. 15, 2025)).

Petitioner’s “engendered reliance interest, and his compliance with everything that the Executive Branch asked of him, entitles him to more than summary arrest and detention on the mere say-so of a government official.” *Cardin Alvarez v. Rivas*, No. 25 Civ. 2943 (CDB), 2025 WL 2898389, at \*16 (D. Ariz. Oct. 7, 2025) (quoting *Mata Velasquez v. Kurzdorfer*, No. 25 Civ. 493 (LJV), 2025 WL 1953796, at \*14 (W.D.N.Y. Jul. 16, 2025)) (alteration adopted). As such, ICE’s “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.” *Valdez*, 2025 WL 1707737, at \*4 (citing *Lopez*, 2018 WL 2932726, at \*15).<sup>6</sup> Neither *Thuraissigiam* nor *Mezei* stands for the proposition that § 1225(b) should be construed to permit the unjustified re-detention of an asylum seeker previously granted their freedom.

**III. Exhaustion of administrative remedies is currently futile, as the Government concedes, and administrative remedies cannot fully remedy Petitioner’s injury in any event.**

Finally, the Government argues in the alternative that Petitioner is required to move for a bond hearing before an IJ before this Court may order his immediate release. Confusingly, it couches its argument as seeking dismissal on grounds of administrative exhaustion, though it candidly admits that exhaustion would be futile absent at least declaratory relief from this Court. *See* Dkt. No. 10 at 18 n.7 (“To be clear, in light of *Matter of [Yajure] Hurtado*, a ruling from this

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<sup>6</sup> Respondents’ estoppel argument, Dkt. No. 14 at 22–23, misses the mark. Petitioner does not invoke equitable estoppel, but rather the constitutional rule that once the Government confers liberty upon a noncitizen living in the interior, it cannot revoke that liberty without individualized process.

Court that Petitioner was detained under Section 1226(a) would be required for him to then request and receive the bond hearing.”). It is creative, as far as exhaustion arguments go—essentially, the Government concedes that administrative exhaustion is *currently* futile, but asks the Court to grant Petitioner *only just enough* relief to make exhaustion possible, so that it can then dismiss the case. That is not how prudential exhaustion requirements have traditionally been applied. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at \*13 (“The final issue to consider is whether Mr. Lopez Benitez must exhaust administrative remedies—in this case, by appealing his detention to an immigration judge—*before* this Court can award relief. Courts generally require ‘administrative exhaustion *before* immigration detention may be challenged in federal court by a writ of habeas corpus,’ as a ‘prudential matter.’” (emphasis added) (quoting *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at \*2 (S.D.N.Y. Feb. 22, 2021))). But even if the Court were inclined, as a prudential matter, to engage in this sort of seesawing exhaustion procedure, Petitioner still should not be required to request a bond hearing for essentially all the same reasons that Judge Ho provided in *Lopez Benitez*.

“[C]ourts in this Circuit may excuse exhaustion where certain exceptions apply, including when ‘(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.’” *Id.* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).

Petitioner “asserts . . . that he was denied due process when ICE detained him . . . without first conducting an individualized assessment as to his dangerousness or flight risk, or any kind of process at all sufficient to qualify as a valid exercise of discretion.” *Id.* “Respondents maintain that, to cure this violation, [Petitioner] may seek relief from this violation in a bond hearing in

immigration court.” *Id.* “However, the implementing regulations provide that “[s]uch hearings . . . are provided for the purpose of custody *re*-determination—a hearing held by an immigration judge after ICE makes its initial decision to detain.” *Chipantiza-Sisalema*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at \*3 (S.D.N.Y. Jul. 13, 2025) (emphasis in *Chipantiza-Sisalema*; alterations in *Lopez Benitez*). “And in this case, the issue is that there is no ‘initial decision’ for [Petitioner] to ‘appeal.’” *Id.* “Accordingly, [s]uch a hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.” *Id.* (quoting *Chipantiza-Sisalema*, *supra*) (alteration in *Lopez Benitez*).

“Indeed, given the nature of the constitutional violation [Petitioner] sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment *before* detaining him—any post-deprivation review by an immigration judge would be inadequate. This is particularly so given that [d]etention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded.” *Id.* (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020)) (emphasis and second alteration in *Lopez Benitez*). “Accordingly, ‘Respondents’ suggestion that [Petitioner] has an adequate remedy available to [him] . . . rings hollow,” and the first exhaustion exception applies here.” *Id.* (quoting *Chipantiza-Sisalema*, *supra*) (second and third alteration in *Lopez Benitez*).

Moreover, “[w]ith respect to the fourth exception, there is no doubt that [the] Petition raises a substantial constitutional question that cannot properly be adjudicated administratively.” *Id.* (quoting *Chipantiza-Sisalema*, *supra*). “Here, [Petitioner] does not argue that he merely needs an opportunity to contest his detention, but that his detention . . . without first receiving an individualized assessment is a violation of his due process rights. Neither an immigration judge

nor the Board of Immigration Appeals is positioned to properly adjudicate such a claim—any relief that either could award would necessarily be after-the-fact.” *Id.* (citations omitted). Even if the Court were to remove the obstacle posed by Respondents’ mandatory detention theory, *supra*, no IJ would be able to determine the constitutionality or statutory legality of his initial detention, which was not carried out “under the original warrant,” Dkt. No. 1 at ¶ 24 (quoting 8 U.S.C. § 1226(b)),<sup>7</sup> and moreover was done “with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond,” *id.* at ¶ 27 (quoting *Valdez*, 2025 WL 1707737, at \*4).

### Conclusion

For all of the reasons stated herein as well as in the original Petition, and in light of the documentary evidence furnished by the parties to these proceedings, we respectfully submit that the Court should enter an order directing Respondents (1) to promptly return Petitioner to the Southern District of New York, at no expense to him; (2) immediately upon his return to this district, to release Petitioner from ICE custody; and (3) to refrain from taking Petitioner back into custody, absent a pre-deprivation hearing that comports with due process.

Respectfully submitted,

/s/ Yevgeny Samokhleb  
*Counsel for Petitioner*

Dated: November 10, 2025  
New York, New York

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<sup>7</sup> The Government has not produced the original arrest warrant in this case. *See generally* Dkt. No. 9. Instead, it provided a *new* warrant which appears to have been hastily drafted at the moment of Petitioner’s detention. *See* Dkt. No. 9-3. We say this because the officer dated the warrant October 8, 2025, which was the date of Petitioner’s detention; wrote out Petitioner’s name, using bizarre capitalization, as “CHen, XiaOquan”; and failed to mark any of the checkboxes which the warrant form provides as options for what the “probable cause” determination might be “based upon.” *Id.*