UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LILIANA DEL CISNE RUEDA TORRES *Petitioner*, v. LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of Homeland Security; and Pamela BONDI, in her official capacity as Attorney General of the United States, *Respondents.*	Case No. 25 Civ. 8404 (DEH)

PETITIONER LILIANA DEL CISNE RUEDA TORRES'S REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Petitioner Liliana Rueda Torres ("Ms. Rueda Torres") is a 33-year-old Ecuadorian mother of three, including one U.S. Citizen toddler, who was arrested on October 9, 2025, after attending her fourth hearing in immigration court. ICE re-detained Ms. Rueda Torres without any individualized determination as to her risk of flight or danger to the community.

In an effort to distinguish Ms. Rueda Torres's case from this Court's prior decisions in *Lopez Benitez* and *Samb*, Respondents seek to classify Ms. Rueda Torres as an "applicant for admission" pursuant to 8 U.S.C. § 1225, because of her initial entry on humanitarian parole. This argument fails. After Ms. Rueda Torres's initial grant of parole, DHS *consistently* treated Ms. Rueda Torres as an individual detained pursuant to 8 U.S.C. § 1226(a), as she was issued *two* warrants, subjected to an initial custody determination, and released on her own recognizance, all under the authority of 8 U.S.C. § 1226(a). Indeed, when she was arrested on October 9, 2025, ICE again cited § 1226(a) to re-detain her.

In addition, Respondents cite to 8 U.S.C. § 1226(c) as an alternative *post hoc* rationalization for Ms. Rueda Torres's re-detention. Respondents rely solely upon a February 22, 2025, "rap sheet" listing a February 21, 2025, arrest. This rap sheet, however, conveniently fails to reflect that in March 2025—one month after the rap sheet had been run and months before she was re-detained and the instant proceedings—the District Attorney declined to prosecute Ms. Rueda Torres, and that her record had been sealed. A plain reading of the statute makes clear that a single dismissed arrest cannot justify detention under 8 U.S.C. § 1226(c).

As Ms. Rueda Torres was detained pursuant to § 1226(a) and she was re-detained without any individualized determination, her case falls squarely into ambit of this Court's prior decisions in *Lopez Benitez* and *Samb*, and she should be immediately released.

ARGUMENT

I. Petitioner's Detention is Not Lawfully Authorized by 8 U.S.C. § 1225(b)

Respondents seek to justify Petitioner's detention by claiming that, because she was paroled pursuant to 8 U.S.C. § 1182(d)(5), she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an arriving alien. Opp. Br. at 5-8. However, Respondents fail to acknowledge that following Ms. Rueda Torres's parole, ICE issued a warrant for her arrest; conducted an individualized determination; and then released her on her own recognizance, all pursuant to 8 U.S.C. § 1226(a). *See* Dkt. No. 9, Exhs. 2, 3, 4, 5, 7. ICE's own documents—including those generated at the time of her detention in October—support the finding that after her parole, ICE consistently treated Ms. Rueda Torres as being subject to discretionary detention pursuant to § 1226(a). *See, e.g.*, Dkt. No. 9, Exh. 7. As in *Lopez Benitez v. Francis*, "Respondents' concessions in their exhibits" regarding Ms. Rueda Torres's "arrest, release, and subsequent re-release are, by themselves, a sufficient basis to conclude that she was detained pursuant to 1226." ---F.Supp.3d --, No. 25 CIV. 5937 (DEG), 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025).

While Ms. Rueda Torres was initially released on September 28, 2022, on parole pursuant to 8 U.S.C. § 1182(d)(5), the entirety of the documents issued by ICE afterwards indicate that she was detained and offered the process required by § 1226(a) and its associated regulations. As a condition of her parole, Ms. Rueda Torres was required to report to ICE within 60 days of her release. Dkt. No. 9, Exh. 1, p. 13. On October 31, 2022, she reported to ICE, where she was served with a warrant on Form I-200 for her arrest under Section 236 of the Immigration and Nationality Act—codified at 8 U.S.C. § 1226—and constructively taken into custody. She was then served with a Notice to Appear ("NTA") charging her with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States without being admitted or

paroled." Dkt. No. 9, Exhs. 2, 3. In addition, the Notice to Appear, dated the same day, ICE declined to charge her as an "arriving alien," but instead "an alien present in the United States." Dkt. No. 9, Exh. 3.

After issuing the NTA, ICE then conducted a custody determination, as required by § 1226(a) and its associated regulations. Dkt. No. 9, Exh. 5; *see* 8 C.F.R. § 236(c); 8 C.F.R. § 1236(c). Having determined that Ms. Rueda Torres was neither a flight risk nor a danger to the community, ICE released her on her own recognizance. Dkt. No. 9, Exhs. 4. Both the Notice of Custody Determination and the Release on Recognizance cite "section 236 of the Immigration and Nationality Act" as the relevant authority. Dkt. No. 9, Exhs. 4, 5.

Notably, the detention authority cited by ICE did not change upon their re-detention of Ms. Rueda Torres in October 2025. The October 2025 warrant on Form I-200 for Ms. Rueda Torres's re-detention does not cite § 1225(b) or § 1226(c), as Respondent now retroactively argue to justify Ms. Rueda Torres's ongoing detention. Opp. at 5, 12 (Dkt. 10). Instead, in that warrant, ICE cited § 1226(a) as the authority for her arrest based on the fact that Ms. Rueda Torres was in ongoing proceedings as the basis for her re-detention. Dkt. No. 9, Exh. 7.

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. [redacted]

Date: 10/09/2025

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that RUEDA-TORRES, LILIANA is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☒ the pendency of ongoing removal proceedings against the subject;

Although Respondents now present the *post hoc* argument that Ms. Rueda Torres is detained pursuant to § 1225, all of Respondents' exhibits support the finding that, notwithstanding Ms. Rueda Torres's initial release on parole, she was detained pursuant to §

1226(a). As in *Lopez Benitez*, the fact that "DHS has consistently treated [Ms. Rueda Lopez] as subject to detention on a *discretionary* basis under § 1226(a) is fatal to Respondents' claim that she is subject to mandatory detention under § 1225(b)." 2025 WL 2371588, at *3.

Even setting aside all of Respondents' own exhibits, as this Court explained in *Lopez Benitez*, Ms. Rueda Torres is not "seeking admission" to the United States, and thus her detention is subject to § 1226(a). *See Lopez Benitez*, 2025 WL 23713588, at *5-*9. *See also Gomes v. Hyde*, No. 25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. 25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025). Because Ms. Rueda Torres is detained pursuant to § 1226(a) – not § 1225 – her detention is not mandatory and "at a minimum…§ 1226(a) requires a valid exercise of DHS's discretion." *Lopez Benitez*, 2025 WL 23713588, at 11,

II. Petitioner's Detention is Not Lawful Under 8 U.S.C. § 1226(c)

In the alternative, Respondents cite Ms. Rueda Torres's February 2025 arrest to authorize her detention under 8 U.S.C. § 1226(c). In support of their argument, Respondents cite to a single arrest in January 2025. *See* Dkt. No. 9, Exh. 6. However, the rap sheet submitted by Respondents appears to have been generated on February 22, 2025, and therefore fails to reflect the crucial fact that in March 2025, the District Attorney declined to prosecute Ms. Rueda Torres's arrest, and that the record had been sealed. *Compare* Dkt. No. 9.7 *with* Declaration of Melissa Lim Chua ("Chua Decl), Exh 1; *cf.* New York Consolidated Laws, Penal Law § 160.5 (governing the termination of a criminal action in favor of the accused). As such, a plain reading of 8 U.S.C. § 1226(c) makes Respondent's reliance upon this arrest impermissible.

8 U.S.C. § 1226(c) mandates detention when an alien in removal proceedings "*is* charged with," "*is* arrested for," "*is* convicted of," "admits committing," or "admits having committed" a

list of enumerated offenses. (Emphasis added.) "The use of the present tense is conspicuous and important." *Helbrum v. Williams Olson*, No. 4:25-cv-00349-SHL-SBJ, 2025 WL 2840273, at *6 (Sept. 30, 2025, S.D. Iowa) (*citing Stanley v. City of Sanford*, 145 S.Ct. 2058, 2063 (2025)). "The plain language makes clear that detention is not mandatory if the criminal charges have been dropped." *Aguilar Lares v. Bondi*, 25-cv-01562-LMB-WBP (D. E.Va. Oct. 29, 2025). This is appropriate, as "[u]nder common usage of the English language, if criminal charges against someone have been dropped, we would not continue to say the person is 'charged with' that crime, present tense." *Helbrum*, 2025 WL 284072, at *6. "Had Congress intended to make detention mandatory for anyone who *was* charged with larceny, it certainly knew how." *Aguilar Lares*, 25-cv-01562-LMB-WBP, at *9 (citing *United States v. Atiyeh*, 204 F.3d 354, 364 (3d Cir. 2025)). As a result, a number of district courts have rejected the argument that 8 U.S.C. § 1226(c) applies to noncitizens whose charges have been dismissed, as they are "no longer pending." *See, Aguilar Lares*, 25-cv-01562-LMB-WBP, at *9; *Helbrum*, 2025 WL 284072, at *7. As the District Attorney's Office declined to prosecute Ms. Rueda Torres's arrest in February, her detention in October does not fall under 8 U.S.C. § 1226(c).[1] As Respondents did not include the February 2025 dismissal of Ms. Rueda Torres's arrest in their supporting documents or brief, they do not argue that 8 U.S.C. § 1226(c) should apply to all arrests, regardless of outcome. As noted above, such a reading would be impermissible under the plain language of the statute.

[1] Ms. Rueda Torres was charged with two misdemeanor offenses: Attempted Petit Larceny, PL 155.25 and Attempted Criminal Possession Stolen Property – Fifth Degree, PL 165.40. *See* Doc. 9, Ex. 6. Even if the plain meaning of § 1226(c) required mandatory detention where the criminal charges have been dismissed, § 1226(c) does not mandate detention for "attempted" qualifying crimes, as the charge "contemplates attempting, not completing, the essential elements of the crime." *See Salgado v. Francis*, No. 25-CV-2524 (VEC), 2025 WL 2806757, at *5 (Oct. 1, 2025) (holding that because Petitioner's detention violated his due process rights, there was no need to make a finding as to the applicability of the statute).

Moreover, subjecting Ms. Rueda Torres to mandatory detention based on dismissed charges "would not only create a 'risk' of 'erroneous deprivation,' but it would *guarantee* it by requiring Petitioner to be detained even where the existing procedures for determining whether appropriate culpable conduct could be attributable to [her] – *i.e.* a criminal trial – has established [she] is not responsible." *See E.C. v. Noem*, No. 2:25-cv-01789-RFB-BNW, 2025 WL 2916264, at *11 (D. Nev. Oct. 14, 2025) (citing the four-part test in *Matthews v. Eldridge*, 424 U.S. 219, 225 (1976)). Applying 8 U.S.C. § 1226(c) to noncitizens who are no longer charged with a crime would "mandate [their] detention even though the procedural protections of our criminal justice system revealed the petitioner is not guilty of the crimes [they were] charged with." *Id.* (holding § 1226(c) cannot be applied to a noncitizen whose charges were dismissed); *see also Doe v. Moniz*, --- F.Supp.3d ---, No. 1:25-cv-12094-IT, 2025 WL 2576819, at *9 (Sep. 5, 2025). As Ms. Rueda Torres's January arrest was dismissed eight months prior to her arrest by ICE in October, her detention cannot be justified by § 1226(c).

III. Petitioner's Detention Violates Her Due Process Rights Under the Fifth Amendment

The Supreme Court has long held that the Constitution applies to non-citizens in the U.S., regardless of their immigration status. *See, e.g., Yamataya v. Fisher*, 189 U.S. 86 (1903); *Landon v. Plascencia*, 459 U.S. 21 (1982); *Leng May Ma v. Barber*, 357 U.S. 185 (1958), *Zadvydas v. Davis*, 533 U.S. 678 (2001). A person's liberty cannot be infringed without "adequate procedural protections." *Zadvydas*, 533. U.S. at 69091. The *Mathews* test, which weights (1) private interest, (2) risk of erroneous deprivation, and (3) government interest, applies to noncitizens. *Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024) (collecting cases) (citing *Mathews v. Eldrige*, 424 U.S. 319 (1976); *see also Velasco-Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Courts in this District—including this Court—have routinely recognized that the detention of noncitizens

without process violates due process. *See Lopez-Benitez*, 2025 WL 2371588; *Valdez v. Joyce*, 25-cv-4627 (GBD), 2025 WL 1707737 (S.D.N.Y June 18, 2025); *Kelly v. Almodovar*, 25-cv-6448, 2025 WL 2381591, (S.D.N.Y. Aug. 15, 2025).

A. Petitioner's detention without any individualized determination violates her procedural due process rights

Respondents do not contest that Ms. Rueda Torres was detained without any individualized determination as to her risk of flight and danger to the community. *See generally* Opp. Instead, Respondents argue that because Ms. Rueda Torres is subject to mandatory detention under § 1225(b), the Due Process Clause does not require a bond hearing. Opp. at 9-12. However, as Ms. Rueda Torres is detained under § 1226(a), this argument is irrelevant. Ms. Rueda Torres falls squarely under *Lopez Benitez, Samb*, and numerous other cases that have found that the detention of noncitizen detained under § 1226(a), without process violates their due process rights and demands release. *See Lopez Benitez*, 2025 WL 2371588, at *9-13; *Samb v. Joyce*, No. 25-cv-6373, 2025 WL 2398831, at * (S.D.N.Y. Aug. 19, 2025); *Munoz Materano v. Arteta*, 25 Civ. 6137, 2025 WL 2630826 *20 (S.D.N.Y. Sept. 9, 2025); *Chipantiza-Sisalema v. Francis*, 25-cv-5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Kelly v. Almodovar*, 2025 WL 2381591, at *3; *Valdez v. Joyce*, 2025 WL 1707737.

First, Ms. Rueda Torres invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco-Lopez*, 978 F.3d at 851; (citing *Hamdi v. Rumsfeld*, 542 U.S. 508, 529 (2004)); *see also Zadvydas*, 533 U.S. at 690. Ms. Rueda Torres's private interest is particularly acute because ICE failed to follow the clear requirements set out by federal law. Once an individual is served with an NTA and placed into removal proceedings, like Ms. Rueda Torres, Section "1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." *Lopez-Benitez*, 2025 WL 2371588, at *10

(quotation omitted); 8 C.F.R. § 236.1(c)(8). Those regulations instruct that "DHS officers [have] the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make an individualized determination as to the appropriateness of detention based on two factors—whether the noncitizen is a danger to property or persons and is likely to appear for any future proceeding." *Lopez Benitez*, 2025 WL 2371588, at *10 (quotation omitted). The custody determination is communicated through Form I-286, which informs the non-citizens of the findings and their right to seek re-determination before an immigration judge.[2] *See* 8 C.F.R. §§ 1003.19(d)-(e).

Ms. Rueda Torres' liberty interest is particularly strong where she was provided *no* process prior to being detained. Respondents' exhibits confirm that ICE re-detained Ms. Rueda Torres without any individualized determination. Respondents do not claim that they undertook any individualized custody determination and their exhibits lack a Notice of Custody Determination for her October 2025 arrest. *See generally* Opp; Decl. of Yi Jiang (Dkt. 11). Respondents' failure to conduct an individualized determination of Ms. Rueda Torres's flight risk and danger to the community constitutes a violation of her procedural due process rights. *See Lopez Benitez*, 2025 WL 2371588, at *9-13; *Samb*, 2025 WL 2398831, at *3-4.

Second, the risk of erroneous deprivation is enormous here, where ICE detained without any process, a woman who was properly meeting her immigration obligations and had no criminal convictions or charges. Prior to her re-arrest by ICE, Ms. Rueda Torres had properly attended ICE check-ins and four immigration court hearings. *See* Dkt. No. 11, at ¶¶ 5, 9, 11-12,

[2] *See* U.S. Customs and Immigration Enforcement, "Enforcement and Removal Operations Bond Management Handbook," Aug. 19, 2011, *available at*: https://www.ice.gov/doclib/foia/dro_policy_memos/eroBondManagementHandbook2018-ICFO-31476.pdf.

15. She timely applied for asylum. *Id.* at ¶ 10. Moreover, as set forth *supra*, in March 2025, the District Attorney declined to prosecute Ms. Rueda Torres for her single arrest. *See* Section II, *supra*. As such, Ms. Rueda Torres' detention without any individualized assessment—ignoring relevant factors such as her full compliance with her immigration obligations and lack of criminal convictions or charges and apparently based solely on outdated information which Ms. Rueda Torres was not given an opportunity to address—"establishes a high risk of erroneous deprivation of [her] protected liberty interest." *Lopez Benitez*, 2025 WL 2371588, at *12 (quotations omitted).

Third, detention under §1226(a) is "valid where it advances a legitimate governmental purpose" such as "ensuring the appearance of [immigrants] at future immigration proceedings and preventing danger to the community." *Valdez*, 2025 WL 1707737 at *4 (quotations omitted). Neither of these interests are advanced by Ms. Rueda Torres's detention, as she has dutifully attended her immigration hearings and—other than a dismissed and sealed arrest—no criminal history.

B. Petitioner's detention without cause violates her substantive due process rights

Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 853-54. In the absence of any evidence for either of those purposes, detention violates the substantive due process rights to be free from purposeless confinement. *See Valdez*, 2025 WL 1707737 at *3. As there is no evidence that Ms. Rueda Torres's detention serves either purpose, *see* Section II.A *supra*, her continued detention violates her substantive due process rights. *See Valdez*, 2025 WL 1707737, at *3.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and immediately release Petitioner. In the alternative, in light of ICE's policy of automatically staying grants of bond in immigration court, this Court should conduct a bond hearing where the burden is placed upon the government and Petitioner's ability to pay must be considered. *See Jimenez v. FCI Berlin*, --- F. Supp. 3d ---, No. 25-cv-326-LM-AJ, 2025 WL 2639390 (D.N.H. 2025); *L.G.M. v. LaRocco*, 25-CV-2631 (PKC), 2025 WL 2173577 (E.D.N.Y. July 31, 2025).

Dated: New York, New York

November 7, 2025

Respectfully submitted,

/s/ Melissa Lim Chua

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c) and Rule 4(c) of the Individual Rules of Practice in Civil Cases of the Hon. Judge Dale Ho, the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules and the page limit of Judge Ho's Individual Practices. As measured by Microsoft Word, and excluding items set forth in the rule, there are 3062 words in this brief and it is 10 pages long.

/s/Melissa Lim Chua