

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

CLAUDIO MARCELO ROCANO BUESTAN,

Petitioner,

v.

No. 25-cv-8544 (JGLC)

BRIAN McSHANE,
Acting Field Office Director,
U.S. Immigration and Customs Enforcement, et al.,
Respondents.

X

**PETITIONER'S REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS
AND BAIL APPLICATION UNDER *MAPP V. RENO***

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I. INTRODUCTION

This is a consolidated reply to Respondent's Opposition to Petitioner's Petition for Writ of Habeas Corpus and Bail Application. ECF Doc. 7 (Response to Petition) and ECF Doc. 9 (Memorandum of Law in Opposition of Petition for Writ of Habeas Corpus and *Mapp* Request). Because the parties have fully briefed the issues and there appears no other relevant evidence, this Court should now rule on Petitioner's pending bail application and the merits of Petitioner's habeas petition at the same time. *See* Fed. R. Civ. P. 65(a)(2) ("Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing."); *see also* 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of [a petitioner's habeas petition] as law and justice require."); *see also, e.g., Jackson v. Capra*, No. 14-CV-202, 2015 U.S. Dist. LEXIS 29930, 2015 WL 1064900, at *1 (S.D.N.Y. Mar. 2, 2015) (considering Petitioner's habeas application and motion for preliminary injunction at the same time); *Peng Cheng Pan v. Ashcroft*, No. 04-CV-6434, 2005 U.S. Dist. LEXIS 42419, 2005 WL 1398601, at *1 (W.D.N.Y. June 14, 2005) (same); *Cohn v. Fed. Bureau of Prisons*, 302 F. Supp. 2d 267, 269 (S.D.N.Y. 2004) (same). Accordingly, Petitioner's bail application and habeas petition should be examined *seriatim*.

Respondents' opposition eliminates any pretense that this case presents a close question. ECF Doc. 8 (Declaration of Deportation Officer Michael V. Charles); ECF Doc. 9. Immigration Customs and Enforcement (ICE) agents first encountered Claudio Marcelo Rocano Buestan ("Mr. Rocano" or "Petitioner") on the street in Newburgh, New York, "while attempting to locate another alien." ECF Doc. 8 ¶5. After profiling and stopping Mr. Rocano, ICE detained him. *Id.* ¶6. Mr. Rocano had been living in the United States for roughly fifteen years at the time of his

detention. *Id.* ICE has held Mr. Rocano without bond and placed in removal proceedings under 8 U.S.C. §1229. ECF 5; ECF Doc. 8 ¶¶5-12.

Courts have overwhelmingly rejected Respondents' position that Mr. Rocano's custody is governed by 8 U.S.C. §1226(a). ECF Doc. 9 at 10-17; *see, e.g., Benitez v. Francis*, No. 25-cv-5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *25 (S.D.N.Y. Aug. 13, 2025); *Sambv. Joyce*, No. 25-cv-6373, 2025 U.S. Dist. LEXIS 161109, 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025); *Gonzalez v. Joyce*, No. 25-cv-8250, 2025 U.S. Dist. LEXIS 208578, 2025 WL 2961626, at *4 (S.D.N.Y. Oct. 19, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *8-12 (E.D.N.Y. Oct. 6, 2025); *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *5-9 (E.D.N.Y. Sept. 29, 2025); *Perez v. Francis*, No. 25-cv-8112 (JGK), 2025 U.S. Dist. LEXIS 219356, at *5-7 (S.D.N.Y. Nov. 6, 2025); *Ortiz v. Freden*, No. 25-cv-960-LJV, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 217654, 2025 WL 3085032, at *36-37 (W.D.N.Y. Nov. 4, 2025). This Court is not writing on a clean slate and should continue to uphold the position taken by this court. *Benitez*, 2025 WL 2371588, at *25.

Respondents' theory is not only mistaken—it is extraordinarily expansive, legally unsupported, and irreconcilable with the structure of the Immigration and Nationality Act ("INA"). Respondent's reliance on cases like *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), and *Shaughnessy v. Mezei*, 345 U.S. 206 (1953), only underscores this point. Both decisions involved individuals apprehended at or virtually on the border, with detentions occurring at the moment of attempted unlawful entry. *Thuraissigiam*, 591 U.S. at 114, *Mezei*, 345 U.S. at 208-209. Respondent's one-hundred-and-eighty degree change in their legal position in an attempt to detain anyone who previously entered without inspection, regardless of how long they have lived within the U.S.

contravenes the plain language of the statute. Section 1226(a) governs Mr. Rocano's detention, which is not mandatory. *Benitez*, 2025 WL 2371588, at *25. Respondents not only overlook the law, but they also brazenly profiled Mr. Rocano and deprived him of his liberty. The extraordinary lawlessness should not be tolerated, and this Court should order Mr. Rocano's immediate release. *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001).

II. ARGUMENT

A. PETITIONER'S WRIT OF HABEAS CORPUS SHOULD BE GRANTED

(i) Petitioner Is Detained Under 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A)

Respondents' entire argument hinges on collapsing the distinction between individuals detained within close proximity to the border immediately upon entering the United States under § 1225(b)(2)(A), and those arrested long after their arrival and well situated within the United States under § 1226(a). ECF Doc. 9 at 10-17. In support of their position, Respondents cite *Thuraissigiam*, 591 U.S. at 140, however the case undermines their argument. The noncitizen in *Thuraissigiam* was apprehended within minutes of unlawfully entering the U.S., and subsequently placed into expedited removal proceedings. *Id.* The Court's holding that § 1225(b)(2)(A)'s framework applied was grounded in the temporal and geographic immediacy of the petitioner's detention, finding that a noncitizen detained "shortly after unlawful entry", cannot be said to have 'effected an entry.'" *Thuraissigiam*, 591 U.S. at 140. Mr. Rocano has lived in the U.S. for fifteen years and was apprehended in Newburgh, New York, based on his appearance. ECF 8 ¶¶ 5-7. The Supreme Court's decision in *Thuraissigiam*, 591 U.S. at 140, does not compel Mr. Rocano's mandatory detention.

Respondents' reliance on *Mezei* is similarly misplaced. *Mezei* involved a returning resident physically held on Ellis Island under an entirely different statutory framework than that which exists under the INA, as amended. Yet, while the detention provisions in that case have been

superseded by statute, the facts of *Mezei* only further crystallize the distinction between those detained at or near the border upon entry, and those who have resided and built a life in the United States over an extended period of time, like Mr. Rocano. In *Mezei*, the petitioner was detained immediately upon attempting to unlawfully enter the United States and was transferred directly to Ellis Island pending a decision on his admissibility. Like the individual in *Thuraissigiam*, 591 U.S. at 140, the petitioner in *Mezei* was detained at the border. The facts of this case are far removed from *Mezei* and *Thuraissigiam*.

Mr. Rocano's legal argument is not breaking new ground; nearly every court in the U.S. to have looked at Respondents' argument has rejected it, including courts within the Second Circuit. *See, e.g., Benitez*, 2025 WL 2371588, at *25. Mr. Rocano could only be detained under § 1226(a). *Id.* To remove any doubt about the state of play, this Court should look to *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630 (E.D.N.Y. Sept. 29, 2025). In *J.U.*, the court rejected the identical arguments Respondents' presented here to try and justify the violation of Petitioner's due process rights. 2025 U.S. Dist. LEXIS 191630, *11-20. The court emphasized that Respondents' "novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with the Supreme Court's prior statutory interpretations." *Id.* The court further observed that the Government "ha[d] not pointed to a single Article III court that has adopted its expansive construction of § 1225(b)(2)(A)." 2025 U.S. Dist. LEXIS 191630, *20. After reviewing the statutory framework, historical practice, and DHS's own treatment of the petitioner, the court concluded that "Petitioner may only be subject to detention as a matter of discretion under § 1226(a)." *Id.* at *26. These statements reinforce that Respondents'

position here—like the one advanced in *J.U.*—rests on the same overbroad interpretation that courts have uniformly rejected.

The Eastern District’s reasoning in *J.U.* was recently adopted and expanded upon in *Comes v. Deleon*, No. 25 Civ. 9283 (AT), 2025 U.S. Dist. LEXIS 225025 (S.D.N.Y. Nov. 14, 2025), where the court held that § 1225(b)(2)(A) did not apply to a long-time resident noncitizen who was apprehended within the United States. According to the court, § 1225(b)(2)(A) did not apply to a noncitizen who had lived in the United States for several years, because expansively reading the statute to cover all inadmissible noncitizens “would render its text, which applies on its face only to certain noncitizens ‘seeking admission,’ useless surplusage.” *Comes*, 2025 U.S. Dist. LEXIS 225025 at *5. The court emphasized that Supreme Court precedent makes clear that noncitizens “already in the country pending the outcome of removal proceedings” fall under § 1226, not § 1225(b). *Comes* at *4 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 281, 289. The *Comes* court also found that the government’s interpretation would “render a recent amendment to Section 1226 superfluous[,]” and is inconsistent with the statutory structure which focuses § 1225 on “borders and ports of entry,” including individuals “presenting themselves at the border, or who were recently apprehended just after entering.” *Comes*, 2025 U.S. Dist. LEXIS 225025 at *5–7. Here, as with the petitioner in *Comes*, Mr. Rocano was arrested “near his home, far from the border,” and should “no longer [have been] subject to detention under § 1225[,]” instead subject “only [to] discretionary detention under § 1226.” *Comes*, 2025 U.S. Dist. LEXIS 225025 at *7. Respondents have wrongly departed from their prior interpretation and refused to accept the findings of this Court. See *Savane v. Francis*, No. 1:25-cv-6666-GHW, 2025 U.S. Dist. LEXIS 194889, *5 (S.D.N.Y. Sept. 28, 2025).

Taken together, these cases—along with a plethora of decisions nationwide—form a uniform and compelling body of authority: courts consistently reject Respondents’ expansive construction of § 1225(b) and reaffirm that long-resident noncitizens arrested within the United States, like Mr. Rocano, are detained under § 1226(a).

(ii) Mr. Rocano Exhausted His Administrative Remedies

Respondents argue that even if §1226(a) applies, Mr. Rocano should first seek a bond hearing from an immigration judge. ECF Doc. at page 26-27; ECF Doc. 8 ¶ 12 (“On November 7, 2025, Rocano Buestan, through counsel appeared for a bond hearing. The immigration judge denied the bond request as the immigration judge did not have jurisdiction to hear a bond matter in this case He already did so.”). Further pursuit of an unavailable remedy is the very definition of futility.

This is precisely the conclusion reached in *Comes, supra*, in which the court reasoned that habeas petitioners are not statutorily required to exhaust administrative remedies, and that the exhaustion requirement may be excused where, as here, a constitutional question is at issue; where “available remedies provide no genuine opportunity for adequate relief[;]” where pursuit of those remedies would cause “irreparable injury[;]” and where exhaustion would be “futile” because the agency is powerless to grant the relief sought. *Comes*, 2025 U.S. Dist. LEXIS 225025, at *14.

Moreover, Respondents’ argument that Mr. Rocano could cure a constitutional violation by simply requesting a *post-hoc* custody re-determination hearing “does not hold water.” *Id.* Only a bond hearing before an Immigration Judge “is an inadequate substitute for the requirement that ICE engage in a ‘deliberative process prior to, or contemporaneous with’ the initial decision to strip a person of [their] liberty.” *Id.* Therefore, Mr. Rocano’s request for a *post-hoc* custody re-

determination hearing in the absence of a bond hearing before an Immigration Judge would not remedy the due-process violation caused.

(iii) Even If § 1225(b)(2) Applied, Due Process Would Require A Bond Hearing

As Respondents note, the Second Circuit’s decision in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), recognized the constitutional necessity of bond hearings even under § 1225(b)(2). While Respondents point to earlier decisions within this District which reached different conclusions (*see Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 220–21 (S.D.N.Y. 2020), both of those decisions predate *Black*. Indeed, the one case that Respondents acknowledge supports the proposition that due process requires a bond hearing was issued after *Black*, and expressly cites *Black* as controlling authority. *See Al-Thuraya v. Warden*, No. 25 Civ. 2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025). While Respondents “respectfully disagree” with these cases (ECF Doc. 8 at 16), disagreement does not diminish the binding or persuasive force of Second Circuit precedent.

As the court held in *Comes, supra*, when ICE detains a noncitizen without any individualized determination at all, the agency’s omission “amounts to a complete and arbitrary denial of due process.” 2025 U.S. Dist. LEXIS 225025, at *10 [citation omitted]. ICE’s failure to conduct any initial assessment of Mr. Rocano’s danger or flight risk violated the most basic requirements of due process, because a later hearing before an IJ “cannot cure” the constitutional violation created by ICE’s failure to conduct the required “initial, contemporaneous evaluation” before depriving a person of liberty. *Id.* at *10–11.

B. RESPONDENTS' OPPOSITION CONFIRMS EXTRAORDINARY CIRCUMSTANCES WARRANT PETITIONER'S RELEASE ON BAIL

Respondents unsurprisingly find that no extraordinary circumstances exist to justify Mr. Rocano's release. The record demonstrates otherwise. ECF Doc. 5. Nothing about Respondents' treatment of Mr. Rocano – from his stop until now – is ordinary and tolerable. Respondents lacked a reasonable suspicion to stop Mr. Rocano, (ECF Doc. 5, Ex. J (Attachment 10)); ECF Doc. 8, ¶5), and have unlawfully held him in mandatory detention. His removal is not reasonably foreseeable because he has relief from removable available under the law. 8 U.S.C. § 1229b(b). Mr. Rocano has raised serious statutory and constitutional claims with the high likelihood he will ultimately prevail. Mr. Rocano satisfies *Mapp*'s first prong.

Mr. Rocano has also demonstrated extraordinary circumstances that warrant his immediate release. Respondents' refusal to accept the court's rejection of its legal position regarding the due process rights of noncitizens is, in and of itself, extraordinary. Moreover, Respondents do not dispute that Mr. Rocano faces ongoing medical needs that remain unaddressed because his detention has prevented him from attending specialist appointments and obtaining diagnostic procedures, including a gastroenterology evaluation and endoscopy for which he had been referred. ECF No. 5, Ex. H (Attachment 8). Mr. Rocano's detention has placed significant strain on his family, particularly his two U.S.-citizen children, one of whom requires special education services and relies heavily on Mr. Rocano's presence and care. ECF No. 5, Ex. F (Attachment 6). The family's financial instability has deepened due to the sudden loss of Mr. Rocano's income and his central role in supporting their household.

Mr. Rocano's detention has also caused severe disruption to his small business, halting multiple projects valued collectively at well over \$400,000, and leaving more than a dozen subcontractors without work. ECF No. 5 and Exhibits A through C (Attachments 1 through 3).

The stalled construction of the family's home further threatens their financial security, and has created additional obligations and penalties that the family cannot meet while Mr. Rocano remains detained. ECF No. 5, Ex. D (Attachment 4).

These hardships are compounded by DHS's systemic misapplication of § 1225(b)(2)(A), which has resulted in Mr. Rocano being (1) arrested under the mistaken belief that his detention was mandatory, (2) detained under that same incorrect premise, and (3) denied bond consideration before an immigration judge based on the same legal error. The frequency with which DHS has repeated this mistake in other cases does not make it any less extraordinary. Instead, the repetition underscores the systemic nature of the problem and heightens the urgency of judicial intervention. *Mapp* recognizes that extraordinary circumstances exist when detention departs so significantly from lawful process that habeas relief risks becoming ineffective. This is precisely that situation.

Finally, to the extent Mr. Rocano's 2019 arrest under Section 1192 of New York State's Vehicle and Traffic Law (V.T.L.) is relevant, Respondents, relying on an affirmation from a deportation officer, assert that the outcome of that case is "unknown". Resp Br. at 2; Charles Dec. ¶4. However, the certified disposition and compliance records contained in Mr. Rocano's bail application confirm that he pled guilty to a single misdemeanor under V.T.L. §1192.3 three months after his arrest, and successfully completed all court-ordered requirements, including the Westchester County Impaired Driver Program. ECF No. 5, Ex. I (Attachment 9). This was an isolated incident followed by full rehabilitation and does not undermine Mr. Rocano's entitlement to habeas relief or interim release.

For all these reasons, Respondents' opposition does not undermine Mr. Rocano's entitlement to release under *Mapp* pending resolution of the habeas petition.

III. CONCLUSION

For the foregoing reasons, and those set forth in Mr. Rocano's opening submissions, the Court should grant the petition, order Petitioner's immediate release.

DATED: November 24, 2025

Respectfully Submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 4.b of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 2,777 words.