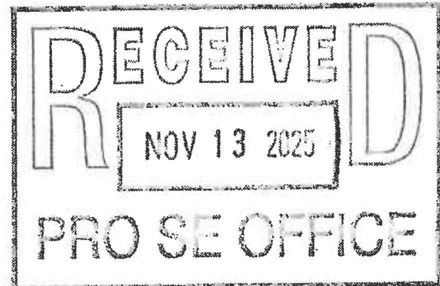
Case 1:25-cv-08602-JHR

Jhoan Maza Herrera
Delaney Hall Detention Facility
451 Doremus Ave
Newark, NJ 07105
Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jhoan Maza Herrera, *Petitioner*, v. LADEON FRANCIS, in his official capacity as Acting New York Field Office Director for U.S. Immigration and Customs Enforcement, et al., *Respondents.*	No. 25-cv-8602 (JHR)



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

TABLE OF CONTENTS

Page(s)

INTRODUCTION .... 2 - 3

FACTUAL BACKGROUND .... 3 - 5

ARGUMENT 5

Respondents Are Wrong About the Statute of Detention 5

I. The Record Demonstrates *Jhoan Maza Herrera* Detention Is pursuant to Section 1226. 6 - 7

II. *Jhoan Maza Herrera* Is Not Subject to Mandatory Detention Under § 1225(b)(2)(A) 7 - 14

III. PETITIONER'S PROCEDURAL DUE PROCESS ARGUMENT 14 - 15

A. The Private Interest Affected by the Official Action 15 - 16

B. Risk of Erroneous Deprivation 16 - 18

C. The Government's Interest in Detaining Petitioner Without a Hearing 18 - 19

IV. Jhoan Maza Herrera Detention violates the APA 19 - 23

CONCLUSION .... 23 - 24

INTRODUCTION

Respondents do not contend they had any individualized reason to re-detain Jhoan Maza Herrera when his immigration court proceedings were adjourned on October 16, 2025. There is no evidence to suggest he posed either a flight risk or a danger to the community. Instead, Respondents contend that they now possess the power to detain him, notwithstanding his previous release on his own recognizance. They have invoked a different, inapplicable statute, which they say authorized his *mandatory* detention. Respondents' interpretation of their statutory authority is novel and wrong. It runs counter to the plain text and structure of the statute; and decades of established judicial and agency precedent.

Respondents' attempt at a sleight of hand as to their authority to detain Jhoan Maza Herrera does not defeat his substantial constitutional claims under the Fifth Amendments and the APA. Those claims merit his immediate release. He was undisputedly released on conditional parole at the border as can be seen by his OREC documents, putting him outside the purview of the cases Respondents rely upon to suggest he lacks any due process rights.

Respondents' argument that he must first seek a bond hearing, despite their own contention that he is ineligible under 1225(b)(2)(A) for bond and the agency's (newly promulgated) binding precedent rendering him ineligible for bond, is meritless. As this Court has held, in a case Respondents recognize is "materially similar", seeking bond would be futile and exhaustion is not required, given the substantial constitutional questions raised.

Accordingly, Jhoan Maza Herrera asks the Court to order his immediate release.

FACTUAL BACKGROUND

Respondents do not contest the material facts of this case. Jhoan Maza Herrera entered the United States without inspection on or around December 30, 2023. He was encountered by Respondents. On the same date of his apprehension, he was served by CBP with a Notice to Appear (NTA) in immigration court. The NTA charged him with removability under INA § 212(a)(6)(A)(i), and 8 U.S.C. § 1182(a)(6)(A)(i), which is a statutory provision applicable to noncitizens who are "present in the United States without being admitted or paroled, or who arrive[ ] in the United States at any time or place other than as designated by the Attorney General."

On or about December 30, 2023, Jhoan Maza herrera was released on his own recognizance pursuant to INA 236, 8 U.S.C. 1226(a)(2)(B), pending the outcome of removal proceedings and was given and NTA under the same authority as can be seen by respondents own response in Exhibit A and Exhibit B. Respondents contend that Petitioner was released "***See their response due to lack of bed space.***" Respondents Reply at 4. Respondents cannot, however, dispute that noncitizens can be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see* ***Velesaca v. Decker***, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"). In releasing Petitioner, Respondents necessarily conducted that analysis and determined that he posed neither a danger nor a flight risk this can be seen by the OREC order issues by respondents.

Once in petitioner filed a change of address EOIR 33 on or about April 24, 2024 notifying the court that he was living in New York state. Petitioner also filed a change of Venue on May 8, 2024 requesting the transfer of his case from California to the New York Court at federal plaza. Petitioner on September 23, 2024 filed a timely asylum application well within the scheduled time required for filling asylum. He attended his

subsequent immigration-court hearing on October 16, 2025 until he was arrested. As this court can see petitioner not only notified the courts immediately after moving to New York but complied with every legal process required by the INA to proceed with his case. On that date, the immigration judge scheduled a follow up hearing for his case to proceed.

As he left that court appearance, Jhoan Maza Herrera was detained by Respondents pursuant to an administrative arrest warrant. Respondents did not provide him with any notice of the reason for his detention or opportunity to be heard regarding the detention. Respondents' unsigned administrative arrest warrant was issued pursuant to INA Section 236 the same as his NTA and other immigration documents provided by respondent will show.

ARGUMENT

1. Respondents Are Wrong About the Statute of Detention.

Respondents are wrong about the statutory authority for Jhoan Maza Herrera detention. Like a growing number of other courts, this Court should reject

Respondents' atextual statutory interpretation and its claim that Jhoan Maza Herrera is subject to mandatory detention and instead hold that it is the prior, well established case law that remains applicable to his detention. ***See Samb v. Joyce,*** **25cv-6373** (DEH), 2025 WL 2398831(S.D.N.Y., August 19, 2025); ***Lopez Benitez v. Franco*****, 1:25-cv-05937** (DEH), 2025 WL 237158 (S.D.N.Y. August 13, 2025); ***Gomes v. Hyde*****, No. 25 Civ. 11571** (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025). Dozens of other decisions to the same effect.

I. The Record Demonstrates Jhoan Maza Herrera Detention Is Pursuant to Section 1226.

As an initial matter, 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). See Exhibit A and B from Respondents Reply.

For example, Form I-200, which is the arrest warrant authorizing petitioner's detention, was directed to immigration officers "authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act . . . to serve warrants of arrest for immigration violations." Form I-200. Crucially, the statutory codification of INA 236 is 8 U.S.C. § 1226. *See* Credits, 8 U.S.C. § 1226. Thus, the very arrest warrant provided to petitioner by Respondents on [Date of his detention] — the day of his detention — indicated that he was being detained under the *discretionary* detention provision of § 1226.

Similarly, and also on the day of his arrest, he was provided with a Notice of Custody Determination, which informed him that he was detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations." *See* I-286. This form also provided petitioner with the option of checking a box to indicate that he "request[ed] an immigration judge review . . . this custody determination." *Id.* As detention under § 1225(b)(2)(A) is mandatory, there is no right to a review by an IJ. Thus, in at least two separate ways, the Notice of Custody Determination informed petitioner that his detention was *discretionary*, rather than mandatory.

The Court must recognize that Respondents' own initial classification of petitioner's detention is not dispositive or controlling here. If Respondents had initially

incorrectly classified the detention as mandatory under § 1225(b)(2)(A), and provided petition with documentation indicating as much, their mistake would not be binding on the Court. The Court must also reject "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." ***Lopez Benitez v. Francis, No. 25-cv-5937*** (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22, 24 (2020) (declaring, in the context of administrative law, that "[t]he basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted")). However, irrespective of Respondents' classification of petition detention prior to this litigation, for the reasons to follow, the Court must finds that he is clearly not subject to § 1225(b)(2)(A).

II. Jhoan Maza Herrera Is Not Subject to Mandatory Detention Under § 1225(b)(2)(A)

Respondents argue that, he still "falls squarely within the ambit of INA's mandatory detention requirement, 8 U.S.C. § 1225(b)(2)(A)." The Court must disagree.

Section 1225(b)(2)(A) states that, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis supplied). Respondents argue that petitioner is an "applicant for admission" within the meaning of § 1225 and is therefore subject to its mandatory detention provision. [***Resp. Br. at 8***] (citing DHS v. Thuraissigiam, 591 U.S. 103, 109 (2020) ("[A]n alien present in the United States who has not been admitted . . . is deemed 'an applicant for admission.'" (quoting 8 U.S.C. § 1225(a)(1)))). It is quite clear, however,

that the mandatory detention provision of § 1225 (b)(2)(A) does not apply to someone like petitioner — who was duly interviewed by CBP at the border and allowed to enter the country nearly 2 years ago, and who has followed all laws and procedures that accompanied his continued presence within the United States ever since that time including complying with courts requirements to notify of change of address, requesting the change of venue and subsequently filling for relief under I-589 for asylum, withholding of removal and protection under the Convention Against Torture.

The Court must start with the statutory text. Respondents' position violates the canon of statutory interpretation that "every clause and word of a statute should have meaning." United States, ex rel. ***Polansky v. Exec. Health Res***., Inc., 599 U.S. 419, 432 (2023) (internal quotation marks omitted). This is because if the mandatory detention provision in § 1225(b)(2) applied to all noncitizens who are "applicants for admission," then there would be no need for Congress to have separately referenced a sub-category of persons "seeking admission" in the specific section that relates to mandatory detention. Adopting Respondents' position would thus require the Court to "elide[] or avoid[] section 1225(b)(2)(A)'s 'seeking admission' language . . . , treating it as mere surplusage of the 'applicant' requirement." ***Martinez v. Hyde, No. 25-cv-11613*** (BEM), 2025 WL 2084238, at *4 (D. Mass. July 24, 2025); *see* **also Rosado v. Figueroa, No. CV 25-02157** PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), at *11 ("Respondents' selective reading of the statute — which ignores its 'seeking admission' language — violates the rule against surplusage and negates the plain meaning of the text"), *report and recommendation adopted sub nom.* ***Rocha Rosado v. Figueroa***, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); ***Lopez Benitez***, 2025 WL 2371588, at *6 (same).

And it is not just subsection § 1225(b)(2)(A) that undermines Respondents' position. In interpreting the language of a statute, courts "must read the words in their context and with a view to their place in the overall statutory scheme." **King v. Burwell, 576 U.S. 473**, 486 (2015) (internal quotation marks omitted). The duty of a court is to "construe statutes, not isolated provisions." ***Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson***, 559 U.S. 280, 290 (2010) (internal quotation marks omitted). In considering § 1225(b)(2)(A) within its statutory context, it was clearly intended to apply to noncitizens who are *presently* seeking to enter the United States, and not those, like petitioner, who have lived in the country for almost 2 years before their arrest.

Notably, Section 1225(b)(2)(A) is "[s]ubject to subparagraphs (B) and (C)," which provide, *inter alia*, that subparagraph A does not apply to "crewm[e]n" or to a "stowaway," 8 U.S.C. § 1225(b)(2)(B), and that "[i]n the case of an alien described in subparagraph (A) who is *arriving* on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(C). This makes it clear that the category of applicants for admission covered by § 1225(b)(2) who are "seeking admission" is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering — not those in petitioner's circumstances.

Respondents' position also cannot be reconciled with a recent amendment to the INA that expanded the categories of persons subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). Section 1226(c) provides for mandatory detention for certain noncitizens who meet very specific criteria. In January of 2025, Congress amended §1226(c) to add additional categories of noncitizens already living within the United

States who are subject to mandatory detention: those who meet certain inadmissibility criteria *and* certain additional criminal criteria — including those who have been charged, arrested for, or convicted of theft, burglary, larceny, and shoplifting. *See* 8 U.S.C. § 1226(c). Those recent amendments are known as the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

"When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." ***Stone v. I.N.S.***, 514 U.S. 386, 397 (1995). As a federal district court in Michigan recently noted, "[i]f § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." ***Lopez-Campos v. Raycraft***, No. 25-cv-12486 (BRM), 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025). This Court agrees. If § 1225(b)(2)(A) applied to all "applicants for admission," including but not limited to those who had previously entered the United States and were later accused or convicted of committing certain crimes, there would have been no need for Congress to amend the INA as recently as January of this year to add *additional* categories of persons subject to § 1226(c)'s mandatory detention provision. Under Respondents' reading of the INA, all noncitizens already in the United States who are in the process of seeking legal avenues to remain here are "seeking admission," and thus subject to mandatory detention — whether or not they were accused or found guilty of a single criminal offense listed in the Laken Riley Act. As the Supreme Court has explained, "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

Unable to square their position with the plain language of § 1225(b)(2)(A) and § 1226(a), Respondents next argue that it is justified by the Supreme Court's decisions in

Jennings v. Rodriguez, 583 U.S. 281 (2018), and ***DHS v. Thuraissigiam***, 591 U.S. 103 (2020). Respondents are incorrect. In *Jennings*, the Supreme Court considered an entirely different question than the one presented here: whether noncitizens *who were indisputably subject to the mandatory detention provisions* of 8 U.S.C. §§ 1225(b)(1), 1225(b)(2), or 1226(c), were entitled to "periodic bond hearings," *Jennings*, 583 U.S. at 286, and whether the detention for noncitizens held under U.S.C. §§ 1225(b)(1) and (b)(2) is limited to a six-month period, *id.* at 297. In holding that the mandatory-detention provisions of the INA contained no such requirements, *Jennings* said nothing about whether persons like petitioner were subject to those provisions in the first place.

Thus, *Jennings* clearly does not control, and ultimately provides little guidance on, the very different question at hand — whether petitioner is among those noncitizens who are subject to mandatory detention under § 1225(b)(2)(A) at all, after having been present in the country for almost 2 years. And Respondents' reliance on *Thuraissigiam* is similarly misplaced. As one court in the Northern District of California recently explained:

Thus, *Jennings* clearly does not control, and ultimately provides little guidance on, the very different question at hand— whether petitioner is among those noncitizens who are subject to mandatory detention under § 1225(b)(2)(A)at all after having been present in the country for 2 years.

And Respondents' reliance on *Thuraissigiam* is similarly misplaced. As one court in the Northern District of California recently explained:

In *Thuraissigiam,* the petitioner had "succeeded in making it 25 yards into U. S. territory" when he was detained under the expedited removal statute.*Id.* at 139. After an asylum officer and immigration judge determined that he lacked a "credible fear" and was thus eligible for immediate removal, the petitioner sought "a new opportunity to

apply for asylum and other applicable forms of relief."*Id.*at 115. Notably, "[h]is petition made no mention of release from custody."*Id.*In denying his petition, the Supreme Court relied on the "sovereign prerogative" to "admit or exclude" aliens, which it held applied even to non citizens "paroled elsewhere in the country for years pending removal."*Id.*at 139. Such petitioners had "only those rights *regarding admission* that Congress has provided by statute."*Id.*at 140(emphasis added). *Thuraissigiam*'s holding concerns the right to additional due process sought over admission determinations. It does not address the due process rights of a noncitizen to remain free once released. ***Salcedo Aceros v. Kaiser,No.25-cv-6924*** (EMC), 2025 WL 2637503,at *6 (N.D. Cal. Sep.12, 2025).

Respondents also point to decisions issued by the Board of Immigration Appeals ("BIA") that they argue are consistent with their current interpretation of § 1225(b)(2)(A). As a threshold matter, these administrative agency decisions are not entitled to substantial deference. ***See Loper Bright Enters. v. Raimondo***, 603 U.S. 369, 402 (2024) ("Congress has [not] taken the power to authoritatively interpret [a] statute from the courts and given it to [an] agency."). This Court should review the BIA's decisions, and will find the agency's reasoning unpersuasive.

Respondents first appeal to ***Matter of Yajure Hurtado***, 29 I&N Dec. 216 (BIA 2025), are more directly relevant. In *Hurtado*, the BIA queried whether "the INA require[s] that all applicants for admission, even those . . . who have entered without admission or inspection and have been residing in the United States for years without lawful status" shall be "subject to mandatory detention for the duration of their immigration proceedings" under § 1225. 29 I&N Dec. at 220. There, the BIA held that the INA *does* so require. *Id.* at 229. The BIA reasoned: "[i]f [the respondent] is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* at 221. Similarly, in *Q. Li*, the BIA

concluded that "for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299). For all the reasons outlined *supra*, the Court must respectfully disagrees with the reasoning of the BIA. *See, e.g.*, ***Barrera v. Tindall***, No. 25-cv-541 (RGJ), 2025 WL 2690565, at *5 (W.D. Ky. Sep. 19, 2025) ("[B]ecause it is the responsibility of the court to decide whether the law means what the agency says[,] the Court disagrees with the holding of ***Matter of Yajure*** [*Hurtado*] and declines to follow it.") (internal quotation marks omitted)).

Indeed, in the approximately three and 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. *See, e.g.*, ***Lopez Benitez v. Francis***, No. 25-cv-5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); ***Mata Velasquez v. Kurzdorfer***, No. 25-cv-493 (LJV), 2025 WL 1953796 (W.D.N.Y. July 16, 2025); ***Lepe v. Andrews***, No. 25-cv-1163 (KES), 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); ***Barrera v. Tindall***, No. 25-cv-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sep. 19, 2025); ***Pablo Sequen v. Kaiser***, No. 25-cv-6487 (PCP), 2025 WL 2650637 (N.D. Cal. Sep. 16, 2025); ***Pizarro Reyes v. Raycraft***, No. 25-cv-12546 (RJW), 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025); ***Doe v. Moniz***, No. 25-cv-12094 (IT), 2025 WL 2576819 (D. Mass. Sep. 5, 2025); ***Garcia v. Noem***, No. 25-cv-2180 (DMS), 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); ***Lopez-Campos v. Raycraft***, No. 25-cv-12486 (BRM), 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); ***Kostak v. Trump***, No. CV 25-1093 (JE), 2025 WL 2472136 (W.D. La. Aug. 27, 2025); ***dos Santos v. Noem***, No. 25-cv-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); ***Rosado v. Figueroa***, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,

2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); ***Gomes v. Hyde***, No. 25-cv-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025).

The list is not only extensive of courts who have denied respondents position and have declined to apply it they share a light on this argument for the court that cannot be ignored were over a dozen courts have looked at the government argument and come to the same conclusion that 1225b does not apply.

Finally, though not necessary to its consideration, the Court must conclude by noting that there is a particular illogic in Respondents' claim that petitioner himself is among the category of persons now subject to mandatory detention under § 1225(b)(2)(A). For DHS was not only well aware that he had resided with his partner and their son, [for close to 2 years] before he was detained. If his detention is and has always been "mandatory" under § 1225(2)(A), as Respondents now claim, then there was no reason for the court not only to approve his Motion to Change venue but to allow him to live within the United States for close to 2 years.

For all of these reasons, the Court must now join the broad consensus among Article III courts to date, and finds that § 1225(b)(2)(A) does *not* apply to a noncitizen like petitioner, who has been living in the United States for close to 2 years, and that his detention can only be authorized if the procedures followed comply with 8 U.S.C. § 1226(a).

III.PETITIONER PROCEDURAL DUE PROCESS ARGUMENT

The court having determined that petitioner is detained pursuant to the discretionary detention authority in § 1226(a), and not the mandatory provisions of § 1225(b)(2)(A), the Court now must turns to whether petitioner's detention satisfies the

constitutional guarantees of procedural due process — specifically, as they have been held to apply to noncitizens within the United States.

In the Second Circuit, the balancing test laid out by the Supreme Court in ***Mathews v. Eldridge***, 424 U.S. 319 (1976), applies when determining the "adequacy of process in the context of civil immigration confinement." ***Chipantiza-Sisalema v. Francis***, No. 25-cv-5528 (AT), 2025 WL 1927931, at *2 (S.D.N.Y. July 13, 2025). The Mathews test requires courts to weigh: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

A. The Private Interest Affected by the Official Action

The first Mathews factor — must analyze petitioner private interest affected by his detention — which weighs strongly in his favor. Petitioner's petition invokes "the most significant liberty interest there is — the interest in being free from imprisonment." ***Velasco Lopez v. Decker***, 978 F.3d 842, 851 (2d Cir. 2020). That paramount liberty interest cannot be abridged without "adequate procedural protections." ***Zadvydas v. Davis***, 533 U.S. 678, 690 (2001). And as discussed supra, "§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." Velesaca, 458 F. Supp. at 241. Specifically, § 1226(a)'s implementing regulations require an individualized determination as to whether the detention of a noncitizen is appropriate after considering whether the noncitizen (1) is a "danger to property or persons" and (2) is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); see also 8 C.F.R. § 236.1(c)(8).

It is undisputed that petitioner was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness. See Petitioner Habeas petition. Nor have Respondents disputed that if respondent is properly classified under § 1226(a), he is entitled to the bond hearing set forth in the statute's implementing regulations. And there is no indication in the record, and Respondents cannot otherwise alleged, that there was any material change in circumstances that triggered petitioner's sudden arrest and detention on October 16, 2025. Instead, it appears petitioner was detained simply because, after he appeared for a previously calendared conference in immigration court which the judge re set for May 7, 2026 prior to him exiting the courtroom, that he was readily identified by Respondents as a noncitizen engaged in the process of petitioning for asylum as a legal path to remain in the United States. But the court must acknowledge that "treating attendance in immigration court as a game of detention roulette is not consistent with the constitutional guarantee of due process." Lopez Benitez, 2025 WL 2371588, at *15.

Thus, petitioner's private interest in avoiding being detained without the individualized bond determination that § 1226(a) requires is extremely high.

B. Risk of Erroneous Deprivation

The next factor the Court must consider is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. This factor weighs heavily towards petitioner as well.

The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained. The Second Circuit's decision in

Black v. Decker, which concerned the limited category of people who (unlike Petitioner) are subject to mandatory detention under § 1226(c) is nonetheless illustrative. 103 F.4th 133 (2d Cir. 2024).

The Black Court underscored that "the almost nonexistent procedural protections in place for section 1226(c)" contribute to a "markedly increased . . . risk of an erroneous deprivation of [p]etitioners' private liberty interests." Id. at 152. It noted that the only procedural protection available to people mandatorily detained under § 1226(c) was a hearing to contest whether they in fact committed a crime that makes them subject to mandatory detention under that statute. Id. In recounting the facts of the case before it, the Court noted that "it appears to us that almost any additional procedural safeguards at some point in the detention would add value." Id. at 153. "[T]he most obvious of these," it noted, would be "an individualized bond hearing at which an [Immigration Judge] can consider the noncitizen's dangerousness and risk of flight." Id.

This Court cannot and could not presume to know whether petitioner would have been detained had he been provided an individualized bond hearing before an IJ as § 1226(a) requires. However, the record certainly establishes that there is, at the very least, a substantial likelihood that Respondents would have failed to meet their burden of proving that petitioner constituted either a flight risk or a danger to the community. In other words, the risk that petitioner was erroneously deprived of his liberty through Respondents' failure to provide him with a pre-detention hearing is exceedingly high.

Among other things, petitioner has attested, and Respondents do not dispute, that he has no criminal history — in native country, nor the United States, or elsewhere. He also attested, and Respondents again do not dispute, that while he has resided in the United States for almost 2 years, he has attended *every* single one of his immigration court appearances provided the courts with updates of his address and change of venues

when needed as well as filling for relief within the allotted 1 year timeline. Additionally, he has applied for asylum, on September 23, 2024 and has obtained counsel in his proceedings both with are weighed in his favor.

Were that not enough, petitioner has attested that he holds significant responsibilities taking care of his partner and child. Thus, the risk of erroneous deprivation of liberty if petitioner continues to be detained without a pre-deprivation bond hearing is extremely high.

C. The Government's Interest in Detaining Petitioner Without a Hearing

The last Mathews factor the Court must weigh is "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335. The government's interest in detaining people on a discretionary, case-by-case basis under § 1226(a) includes "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community." *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (internal quotation marks omitted). As discussed supra, there is no indication in the record that detaining petitioner without a pre-deprivation hearing would further those interests, because without one, there is no basis to conclude that he falls into either category, i.e., that he poses a risk of non-appearance or a danger to the community. To the contrary: his present circumstances and life history, insofar as is detailed in the array of evidence submitted by both parties, along with their pleadings, overwhelmingly supports the conclusion that he poses no such risk.

Turning to the "fiscal and administrative burdens" the Court considers in the third Mathews prong, the Court should have no difficulty finding that the burdens of continuing petitioner's detention without any opportunity for him to seek bond are

substantially higher than the burdens of providing him with minimal additional process. First, until recently, the government has long provided noncitizens with bond hearings before detention pursuant to § 1226(a), and there is an established process for doing so that DHS can readily follow here. By contrast, the fiscal and administrative burdens of keeping petitioner — who the record suggests is not a flight risk nor a danger to the community — detained are extremely high.

In his initial pro se petition, petitioner alleged he was held in the Federal Plaza holding area for in condition that other courts have ruled are inhumane and inporper. Upon his transfer to the new facility Delaney hall does not escape the same scrutiny if the court may see the report attached as Exhibit A.

Thus, the third Mathews factor weighs strongly toward petitioner. There is no discernable government interest in his mandatory detention, and the fiscal and administrative burdens of giving him the process he is due — a routine bond hearing before an IJ — are minimal. By contrast, the fiscal and administrative burdens of his ongoing detention are unacceptably high.

As all three of the Mathews factors weigh heavily toward petitioner, this Court should conclude that his detention violates his procedural due process rights under the Fifth Amendment, warranting a grant of his habeas petition and his immediate release.

IV. Jhoan Maza Herrera Detention violates the APA

Jhoan Maza Herrera argues that respondents decision to revoke his OREC and detain him was arbitrary and capricious and thus violated the Administrative Procedure Act.

A. APA Legal Standard

The APA sets forth the procedure by which federal agencies are accountable to the public in their actions subject to review by the courts." Dep't of Homeland Sec. v. Regents of the Univ. of Cal, 591 U.S. 1, 16 (2020) (quoting Franklin v. Massachusetts, 505 U.S. 788, 796 (1992). "It requires agencies to engage in reasoned decision making and directs that agency actions be set aside if they are arbitrary and capricious." Id. (citations modified) 5 U.S.C. § 706(2)(A).

Agency actions are arbitrary and capricious when the agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation modified). "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.*

When reviewing agency action, the court must consider only the reasons expressly provided by the agency; it "may not supply a reasoned basis for the agency's action that the agency itself has not given." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). Likewise, the reviewing court may not consider an agency's post hoc rationalizations. *Regents of the Univ. of Cal.*, 591 U.S. at 21. The reviewing court will, however, "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (quotation omitted).

Finally, federal agencies are "'obliged to abide by the regulations [they] promulgate[],' including [their] own internal operating procedures." *Backcountry Against Dumps v. Fed. Aviation Admin., 77 F.4th 1260, 1267 (9th Cir. 2023) (quoting Sameena Inc. v. U.S. Air Force, 147 F.3d 1148, 1153 (9th Cir. 1998)). "This is especially true '[w]here a prescribed procedure is intended to protect the interests of a party before the agency.'" Id. (quoting Sameena Inc., 147 F.3d at 1153).*

***b.* The Government provided no contemporaneous explanation for revoking Jhoan Maza Herrera release.**

Jhoan Maza Herrera argues that ICE's decision to change its initial position and revoke his release lacks the reasoned decision-making necessary to survive arbitrary and capricious review. The Court must agree. First, there is no contemporaneous documentation or evidence explaining the agency's decision to revoke Jhoan Maza Herrera discretionary release under OREC. The documentation accompanying his arrest states only that Jhoan Maza Herrera was arrested for the pendency of ongoing removal proceedings against subjects.

The record does not reflect any deliberative process, any consideration of Jhoan Maza Herrera individual circumstances, or any articulated reasoning for why the agency changed its two-year-old determination that he was not a flight risk or danger to the community. This absence of contemporaneous explanation renders the decision arbitrary and capricious. ***See M.S.L. v. Bostock***, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *10–11 (D. Or. Aug. 21, 2025) (granting habeas where ICE did not provide petitioner with any written explanation of the reasons for her detention "upon revocation"). Thus, ICE's revocation decision is arbitrary and capricious.

B. The Government's post-hoc justifications fail arbitrary and capricious review.

While the absence of contemporaneous explanation is itself fatal to the Government's detention decision, the Court must also consider the post-hoc justifications the Government has offered during this litigation. Even accepting these belated rationalizations, the revocation decision was arbitrary and capricious.

The Government has offered this explanations for revoking respondents OREC. After his arrest, ICE maintains that petitioner's "OREC was cancelled pursuant him being subject to mandatory detention under 1225b. When ICE has previously released a noncitizen after determining they are not a flight risk or danger to the community, "the BIA has limited this [revocation] authority such that, in practice, the DHS re-arrests non-citizens only after a 'material' change in circumstances: 'where a previous bond determination has been made by an immigration judge, no change should be made by the DHS absent a change of circumstance.'" ***Vargas v. Jennings***, Case No. 20-cv-5785, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020) (quoting ***Ortega v. Bonnar***, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) (quoting ***Matter of Sugay***, 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); ***Saravia v. Sessions***, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). This standard prevented arbitrary revocations and ensured that detention decisions rested on individualized assessments of changed circumstances rather than categorical assumptions.

Here, the Government's justifications fall flat. First, the Government's assertion that the OREC was cancelled because Jhoan Maza Herrera is subjected to mandatory detention under 1225b is incorrect as the proper statute is 1226 as this court shall find. The immigration judge gave petitioner until May 7, 2026 after his court date to continue his case, prior to his arrest. Therefore a statute that does not apply to petitioner, cannot serve as the basis for revocation. Moreover, the immigration judge's order granting petitioner more time does not direct ICE to revoke Jhoan Maza Herrera's OREC. Thus, the Court must find that the agency has failed to "articulate a satisfactory explanation for

[ICE's] action including a rational connection between the facts found and the choice made." ***Motor Vehicle Mfrs. Ass'n***, 463 U.S. at 43 (citation modified).

Second, the Government cannot raise a flight risk determination. This reasoning impermissibly "fail[s] to consider . . . important aspect[s] of the problem" and "runs counter to the evidence" before the agency, making it arbitrary and capricious. *See id.* The only fact the Government considered when it revoked petitioner release and detained him was that an immigration judge had re scheduled his hearing. This change, cannot constitute a material change justifying revocation—particularly where, as here, the individual's circumstances demonstrate reduced rather than increased flight risk.

The agency failed to consider other important aspects relevant to its decision, like the fact that Jhoan Maza Herrera lives in New York with his family for 2 years and never missed a court date always updates his address, and has even requested the venue be changed so that he can properly proceed with is case. The agency failed to consider that Jhoan Maza Herrera asylum application has not been denied and that he has complied with all the conditions of his release. The agency also apparently failed to consider that immigration judge's new court date for May 7, 2026 was given by the IJ so that petitioner would have more time to prepare the matter. Rather than consider any of these important aspects relevant to its decision, the agency offers only a post hoc, generalized assumption to support its decision—the assumption that any person who crosses the border irrelevant of timeframe is subject to 1225b.

Accordingly, even considering the agency's post hoc rationalizations for revoking Jhoan Maza Herrera release, the decision was arbitrary and capricious.

V. CONCLUSION

For the foregoing reasons, Petitioner asks the Court to order his immediate release from custody and that respondents not re detain petitioner without providing him notice and

an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, at which the government will bear the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a), specifically that he poses a risk of non-appearance in court for his removal proceedings and/or that he poses a danger to the community. Petitioner also ask the court that upon the hearing date set by the court the arguments presented in the habeas corpus and the responses be considered in its totality when coming to a decision as the petitioner is Pro Se.

Respectfully submitted,

Jhoan Maza Herrera

Petitioner Notifies that Court that he mailed a Copy of this Response by placing said response in the Outgoing mail of the Facility he is currently detained in to the following address:

Jay Clayton
United States Attorney for the
Southern District of New York
Attorney for Respondents
86 Chambers St, 3rd Floor
New York, NY 10007
Tel. (212) 637-2699

Exhibit A

1. Copy of Order of Release On Recognizance

U.S. Department of Homeland Security

Order of Release on Recognizance

File No: [redacted]
Date: December 30, 2023
Event No: [redacted]

Name: JHOAN MAZA HERRERA

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in (writing) (person) to AS INDICATED ON THE ATTACHED OREC G-56
(Name and Title of Case Officer)

at ______ (Location of DHS Office) on ______ (Day of each week or month) at ______ (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the immigration officer listed above.
☒ You must not violate any local, State, or Federal laws or ordinances.
☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.
☒ Other: employment not authorized

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.

ARTURO D GONZALEZ [illegible]
Date: 2023.12.30 [illegible]
[illegible] CBP
(Signature of DHS Official)

ARTURO GONZALEZ
Acting/Patrol Agent In Charge
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

SEBASTIAN CHAVEZ [illegible] CBP
(Signature of Immigration Officer Serving Order)

[signature]
(Signature of Alien)

12/30/2023
(Date)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.
☐ The alien was taken into custody for removal.

______ (Signature of Immigration Officer Canceling Order) ______ (Date)

Form I-220A (Rev. 08/01/07) N