UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FERNANDO ISAIAS CARRANZA CHUQUI,

Petitioner,

v.

STEPHEN KURZDORFER, et. al.,

Respondents.

Case No. 6:25-cv-06614-MAV

PETITIONER'S REPLY IN FURTHER SUPPORT OF HIS MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Respondents attempt to justify their detention of a teenage boy with no criminal history and a pathway to citizenship based solely on a statute that, until a few months ago, had never been applied to anyone like him. And they claim that this not only subjects him to mandatory detention, but strips him of his constitutional due process rights. This cannot be. Courts have repeatedly rejected the dangerous notion that noncitizens detained under 8 U.S.C. § 1225(b) cannot bring constitutional challenges to their detention. And as someone who has lived in this country with the government's permission for four years and whose Special Immigrant Juvenile Status ("SIJS") puts him on a path to permanent status, Fernando enjoys particularly strong due process rights regardless of his statute of detention.[1] Respondents do not contend that Fernando's detention comports with substantive or procedural due process—they cannot. They already concluded that he presents no flight risk or danger when they released him from custody years ago, and nothing has changed to justify re-detention. As Fernando was afforded no process at all before re-detention, and his detention serves no legitimate purpose, he must be released. That he is in fact detained under § 1226(a)—not § 1225(b)—only strengthens these claims. He urges the Court to grant this motion and order his release to restore him to the position he was in prior to his unlawful detention.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO HEAR FERNANDO'S CLAIMS.

This case is about Fernando's challenge to his unlawful detention. He does not make a systematic challenge against Respondents' implementation of 8 U.S.C. § 1225(b), nor does he make any challenges related to his removal proceedings. Accordingly, none of the narrow jurisdictional bars Respondents attempt to invoke prevent the Court from hearing his claims.

[1] All terms not otherwise defined herein have the meanings provided in ECF No. 4-1.

A. Section 1252(e)(3) Does Not Deprive the Court of Jurisdiction.

Section 1252(e)(3) "narrowly applies only to systemic challenges to regulations implementing [8 U.S.C. § 1225(b)]." *Mata Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *6-7 (W.D.N.Y. July 16, 2025). But Fernando "is not challenging the *implementation* of 8 U.S.C. § 1225(b)," *J.A.M. v. Streeval*, 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025); rather, he brings "constitutional [and] statutory claims which precede and are collateral to" § 1225(b)'s statutory framework, *Mata Velasquez*, 2025 WL 1953796, at *7. He argues that, regardless of whether § 1225(b) applies, his re-detention without any process and his ongoing detention without any legitimate purpose violate his due process rights. ECF No. 1 at ¶¶ 51-66; ECF No. 4 at 19-26. And he asserts that, in fact, § 1226(b), not § 1225(b)(2), "provides statutory authority for his detention," *J.A.M.*, 2025 WL 3050094, at *1. ECF No. 1 at ¶¶ 74-81; ECF No. 4 at 18-19. Section 1252(e)(3) does not prevent the Court from hearing these individualized claims.

B. Sections 1252(g), 1252(a)(5), and 1252(b)(9) Do Not Deprive the Court of Jurisdiction.

Section 1252(g) is also "narrow," only preventing review of discretionary decisions "to commence removal proceedings, adjudicate cases, or execute removal orders." *Ozturk v. Hyde*, 136 F.4th 382, 396-397 (2d Cir. 2025). It is not, as Respondents would have it, "a shorthand way of referring to all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Here, Fernando challenges only his unlawful detention and § 1252(g) "does not preclude jurisdiction over the challenges to the legality of [a noncitizen's] detention." *Ozturk*, 136 F.4th at 397; *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 153 (W.D.N.Y. 2025) (rejecting this broad reading of § 1252(g)).

Section 1252(a)(5) bars district courts from hearing challenges to "an order of removal," while Section 1252(b)(9) bars them from reviewing "claims arising from actions or proceedings

brought to remove [a noncitizen]." *Ozturk*, 136 F.4th at 399, 401. Neither applies here, where "no order of removal is at issue," *id.* at 401, and Fernando does not challenge any aspect of his removal proceedings. *See DHS v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). That "detention itself is 'necessary for ... removal proceedings'" does not "funnel[] … unlawful detention claims into § 1252(b)(9) claims." *Ozturk*, 136 F.4th at 399. Fernando's claims are legally independent from his removal proceedings, and thus "may be resolved without affecting [them]" at all. *Id.*[2]

II. FERNANDO IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS.

Even if Fernando is detained under § 1225(b)(2)—which he is not—his detention serves no lawful purpose and occurred with no pre-deprivation process, violating his due process rights.

A. Fernando's Detention Violates His Substantive and Procedural Due Process Rights Regardless of the Statutory Basis for His Detention.

i. Fernando Has Due Process Rights Regardless of the Statute of Detention.

The Supreme Court has repeatedly emphasized that "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020). Respondents incorrectly argue that noncitizens detained under 8 U.S.C. § 1225(b)(2), are entitled to no due process rights "beyond what Congress has provided" because they have not yet *legally* been admitted into the United States. ECF No. 12 at 17. As this Court has found, however, "this cannot be correct." *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 316 (W.D.N.Y. 2019).

[2] Contrary to Respondents' contention, the plurality opinion in *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018), does not compel otherwise. *See Ozturk*, 136 F.4th. at 400-401. The *Jennings* plurality in fact found that there *was* jurisdiction to review detention claims despite § 1252(b)(9), rejecting a reading that would force noncitizens to wait until their removal proceedings were complete to challenge their unlawful detention, as this would make these claims "effectively unreviewable." 583 U.S. at 293-94; *see also Ozturk*, 136 F.4th at 400-401.

For their troubling argument, Respondents rely primarily on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). There, the Supreme Court merely held that noncitizens apprehended while trying to *enter* the country "ha[ve] only those rights *regarding admission* that Congress has provided by statute." *Id.* at 140 (emphasis added). The petitioner in that case did not even "'ask to be released,'" making the Court's findings plainly limited to admission—not detention. *Mata Velasquez*, 2025 WL 1953796, at *15 (citation omitted). Accordingly, *Thuraissigiam* "does not foreclose [§ 1225(b) petitioners'] arguments regarding … release." *Id.* (citing *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023)); *see also A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) ("Nowhere … did the Supreme Court suggest that [noncitizens] being held under § 1225(b) may be held … unreasonably with no due process implications, nor that [they] have no due process rights."); *Santiago v. Noem*, 2025 WL 2792588, at *7-8 (W.D. Tex. Oct. 2, 2025) (same); *Leke v. Hott*, 521 F. Supp. 3d 597, 604–05 (E.D. Va. 2021) (same).

Respondents' reliance on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) is equally unavailing. The Cold War-era case involved the detention of a noncitizen who had lived in the U.S. for years but traveled "behind the Iron Curtain" for an extended period. *Mezei*, 345 U.S. at 208, 214. The Supreme Court upheld the government's right to exclude him from the country without a hearing, "as authorized by emergency regulations" applicable at that time "'of international tension and strife.'" *Id.* at 210, 212. There had already been an "individualized" determination that Mezei was a security risk, *Clerveaux*, 397 F. Supp. 3d at 315 (citation omitted), and the Court "explicitly tailored its holding to the national security context." *Lett v. Decker*, 346 F. Supp. 3d 379, 386-87 (S.D.N.Y. 2018), *vacated as moot*, 2020 WL 13558956 (2d Cir. July 30, 2020). This decision thus is not a blanket denial of § 1225(b) petitioners' due process rights. *Id.*; *Gutierrez v. Dubois*, 2020 WL 3072242, at *8-9 (S.D.N.Y. June 10, 2020) (collecting cases).

Instead, what process any noncitizen is due depends on their individual circumstances. *See Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966). While noncitizens "'on the threshold of entry' may have fewer due process rights than other persons," their "'constitutional status changes' after [they] 'begin[] to develop the ties [to this country] that go with permanent residence.'" *Clerveaux*, 397 F. Supp. 3d at 311 (citation omitted). Respondents do not contest that Fernando has lived in the U.S. for more than four years, nor do they contest that his SIJS renders him "a hair's breadth" from LPR status and creates a "substantial legal relationship" with the United States. *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 173-75 (3d Cir. 2018). This affords him meaningful due process rights regardless of his statute of detention. *See id.*; *Clerveaux*, 397 F. Supp. 3d at 311.

ii. Respondents Fail to Rebut Fernando's Substantive Due Process Claim.

Other than wrongly claiming that Fernando has no due process rights at all, Respondents do not even try to argue that his detention serves a legitimate purpose that satisfies substantive due process, thereby waiving any such arguments. *In re UBS AG Secs. Litig.*, 2012 WL 4471265, at *11 (S.D.N.Y. Sept. 28, 2012) (a party "concedes through silence" arguments it fails to address). This silence is unsurprising, as the government previously found that Fernando is neither a flight risk nor a danger to the community—the only two circumstances that can justify immigration detention—and nothing has changed since then that would suggest otherwise. *See* ECF No. 1 at ¶ 54; ECF No. 1-2. Fernando has no criminal record, ECF No. 1-7, and his ties to the United States have only grown stronger. Accordingly, his detention bears "no reasonable relation" to a legitimate interest in immigration detention, mandating his release. *Zadvydas*, 533 U.S. at 690.

iii. Fernando Is Likely to Succeed on His Procedural Due Process Claim.

Courts across the country have confirmed that noncitizens who, like Fernando, have previously been released from detention on a finding of lack of flight risk and danger, cannot constitutionally be re-detained without a pre-deprivation hearing justifying that detention. ECF

No. 1 at ¶¶ 56-66 (collecting cases). Respondents offer no counter to this extensive case law. Nor do they contest the fact that the *Matthews* factors weigh overwhelmingly in favor of ordering Fernando's release until he is provided meaningful pre-deprivation process, given that his prior release from custody without bond, his grant of SIJS, and the government's prior dismissal of his removal proceedings all create a strong interest in his continued liberty. *See id.*

B. Fernando's Detention Is Governed by Section 1226(a), Which Only Strengthens His Due Process Claims.

In any event, Fernando's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2).[3] As courts in this District have recently held, Respondents' newfound interpretation of § 1225(b)(2) as applying to all noncitizens who entered the country unlawfully, *see* ECF No. 12 at 5-10, is not supported by the statutory text, the broader context of the statute as a whole, or Supreme Court jurisprudence—and it even conflicts with how Respondents themselves have read the statute for decades. *Alvarez Ortiz v. Freden*, 2025 WL 3085032, at *6-10 (W.D.N.Y. Nov. 4, 2025); *see also Rezende v. Bondi*, No. 6:25-cv-6538, ECF No. 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No. 6:25-cv-6532, ECF No. 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 6:25-cv-6528, ECF No. 20 (W.D.N.Y. Oct. 17, 2025) (Vacca, J.).

The plain language of § 1225(b)(2) provides 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." § 1225(b)(2)(A) (emphasis added). While Respondents claim that "applicant for admission" and "seeking admission" are used

[3] While Respondents claim that the INA does not create a cause of action, ECF No. 12 at 19, it is well-recognized that violations of the INA can be addressed via the APA. *See, e.g.*, *Immigrant Defs. L. Ctr. v. Mayorkas*, 2023 WL 3149243, at *28 (C.D. Cal. Mar. 15, 2023); *Duron v. Nielsen*, 491 F. Supp. 3d 256, 260 (S.D. Tex. 2020); *Doe v. ICE*, 490 F. Supp. 3d 672 (S.D.N.Y. 2020); *see also Saget v. Trump*, 345 F. Supp. 3d 287, 300 (E.D.N.Y. 2018) (refusing to dismiss standalone ultra vires claim). Fernando's due process claims are also independent of his statutory-based claim.

"interchangeably" to refer to any noncitizen who has not been lawfully admitted into the United States, ECF No. 12 at 5, this is plainly wrong. "[I]f all 'applicant[s] for admission' also are 'seeking admission,' then the words 'seeking admission' would be surplusage." *Alvarez Ortiz*, 2025 WL 3085032, at *7 (collecting cases). "After all, Congress simply could have said 'if the examining immigration officer determines that *an applicant for admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.'" *Id.* But it did not. So the clearest reading of the statute is while any noncitizen who has not been lawfully admitted into the United States is an "applicant for admission," only those who are actively "seeking admission" via "physical entry at the border" are subject to detention under § 1225(b)(2)(A). *Id.* at *6-7.

This reading is supported by other subparagraphs of § 1225(b)(2), which carve out exceptions to mandatory detention for categories of applicants for admission who arrive to the United States in certain ways (stowaways, crewmen, certain noncitizens arriving on land). *Id.* at *8. It is also supported by the statute's implementing regulations, which refer to noncitizens "seeking admission at a United States port-of entry," 8 C.F.R. § 235(f)(1), again "suggest[ing] that those 'seeking admission' are at or near the border." *Id.* Further, § 1225 is nestled among various other provisions "dealing exclusively with arrival or attempted arrival of noncitizens" to the United States and even includes the word "arriving" in its title. *Id.* at *9.

Moreover, Respondents' reading would render the Laken Riley Act meaningless. *Id.* at *8. That Act amended § 1226(c) to mandate the detention of certain "inadmissible" noncitizens accused or convicted of various crimes. 8 U.S.C. § 1226(c)(1)(E). But, under Respondents' reading of § 1225(b)(2), however, any noncitizen who is "inadmissible" is already subject to mandatory detention simply as an "applicant for admission." This would not only render another part of the

same statutory scheme entirely superfluous, but would mean that Congress passed the Laken Riley Act "for no good reason at all." *Alvarez Ortiz*, 2025 WL 3085032, at *8-9.

Reading § 1225(b)(2) to only apply to noncitizens seeking to physically enter the country is also how the Supreme Court has repeatedly referred to the statute. *See Jennings*, 583 U.S. at 289 (contrasting § 1225(b) and § 1226(a) as involving noncitizens "seeking admission into the country" as opposed to "already in the country"); *Zadvydas*, 533 U.S. at 693 ("[O]nce [a noncitizen] enters the country, the legal circumstance changes…."). Naturally, this is also how Respondents themselves have read the statute for years. "Under the administrations of five presidents—including this one in 2016-2020—section 1225 applied to noncitizens at or near the border or those who were still seeking admission under the legal fiction of parole; section 1226, on the other hand, applied to those noncitizens found in the United States without legal status and therefore subject to removal." *Alvarez Ortiz*, 2025 WL 3085032, at *10.

Respondents also fail to engage with any of the numerous other cases finding that noncitizens previously processed as UCs, like Fernando, cannot be re-detained under § 1225(b)(2). ECF No. 1 at ¶ 78 (collecting cases). Rather, detention of UCs is governed by an entirely different statutory scheme requiring them to be held in the "least restrictive setting available." 8 U.S.C. § 1232(c)(2)(B). Similarly, many courts have held that SIJS grantees are necessarily detained under § 1226(a), given that an award of SIJS confirms that they are not "seeking admission." *See* ECF No. 1 at ¶¶ 79-80 (collecting cases). Ultimately, as Fernando was previously detained and released as a UC under the TVPRA, has a valid SIJS grant, and has been present in the United States for the past four years, there can be little doubt that his detention is governed by § 1226(a).

This does not change the relief to which Fernando is entitled. It simply eliminates any argument that he does not enjoy robust constitutional due process rights. And since Respondents

do not even claim that Fernando's detention is otherwise constitutional, he is likely to succeed on the merits of his due process claims,[4] whose only remedy is immediate release to restore him to the position he was in prior to his unlawful detention.[5]

III. FERNANDO SUFFERS IRREPARABLE HARM WITH EACH DAY OF UNLAWFUL DETENTION AND THE EQUITIES AND PUBLIC INTEREST WEIGH IN HIS FAVOR.

As for irreparable harm, Respondents' arguments are all based on the faulty assumption that Fernando's detention was lawful to begin with. *See* ECF No. 12 at 12. But it was not, and "there is no question that unlawful detention causes irreparable harm: indeed, every minute that someone is unlawfully denied freedom results in an injury that really can never be remedied." *Alvarez Ortiz*, 2025 WL 3085032, at *11.[6] Accordingly, this requirement is "easily met." *Id.* "Likewise, . . . the balance of the equities and the public interest favors granting" a preliminary injunction. *Id.* Fernando "is not a danger or a flight risk" and so "it is in no one's interest to detain him." *Id.* And while Respondents may have an interest in strictly enforcing the nation's immigration laws, ECF No. 12 at 18, neither those laws nor our Constitution authorize Fernando's current detention. Moreover, "any added burden on the government" from releasing Fernando until

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[4] Respondents also address Fernando's Fourth Amendment claim, ECF No. 12 at 18-19, but that claim was not raised in his PI motion, ECF No. 4-1; ECF No. 12 at 1 (recognizing that Fernando is only moving on Claims 1, 2, and 5). He will therefore address the claim in greater detail during any future briefing on the merits of his petition/complaint. For now, he notes that Respondents' suggestion that his warrantless arrest was authorized simply because he was in a car is unsupported by the law or facts. A probable cause determination to support a warrantless arrest under 8 U.S.C. § 1357(a) is assessed based on "the totality of the circumstances" whether the noncitizen is likely to escape before a warrant can be obtained, "including the officer's ability to determine the person's identity, knowledge of that individual's prior escapes or evasions of immigration authorities; attempted flight from an ICE officer; and the person's ties to the community (such as a family, home, or employment)." *Castanon Nava v. DHS*, 2025 WL 2842146, at *4 (N.D. Ill. Oct. 7, 2025). These factors clearly weighed in Fernando's favor, as the government had already found when it previously released him, terminated his removal proceedings, and granted him SIJS. In any event, when officers arrested him, he had already exited the car and was under their full control. ECF No. 1 at ¶ 29.

[5] Release, rather than a bond hearing, is also appropriate given that noncitizens granted bond by immigration judges are regularly being subjected to unconstitutional automatic stays of those decision—rendering this relief hollow. *See J.M.P. v. Arteta*, 2025 WL 2984913, at *17-19 (S.D.N.Y. Oct. 23, 2025) (collecting cases).

[6] Unlike in a case Respondents cite, *Hernandez-Hernandez v. Feeley*, 535 F. Supp. 3d 142, 151 (W.D.N.Y. Apr. 21, 2021), Fernando does not challenge his continued statutorily authorized detention. Rather, he never should have been detained at all without pre-deprivation process and his detention without any purpose or process is equally unlawful.

they can lawfully justify his detention "is far outweighed by [his]—and society's—interest in his release if his detention is not warranted." *Alvarez Ortiz*, 2025 WL 3085032, at *11.

IV. THE COURT SHOULD PRELIMINARILY ENJOIN FERNANDO'S TRANSFER AND SHOULD NOT REQUIRE HIM TO POST A BOND.

While this Court previously denied Fernando's request for a temporary restraining order prohibiting his transfer outright while these proceedings remain pending, it is free to revisit this determination at the preliminary injunction stage. In light of "recent caselaw" that has caused other judges of this Court to "reconsider" declining to enjoin transfer, *Alvarez Ortiz*, 2025 WL 3085032, at n.3, Fernando respectfully asks the Court do the same if it does not immediately order his release, given his young age and "interests in participating in further proceedings before this Court and in maintaining adequate access to legal counsel through these proceedings." *Id.*

Notably, Respondents only ask the Court to require Fernando to post security if it enjoins his transfer—not if it orders any other relief. *See* ECF No. 12 at 20. But requiring a 19-year-old who has been unlawfully deprived of his liberty and the ability to work for nearly five months to post bond would be inappropriate. "Rule 65(c) gives the district court wide discretion to set the amount of a bond, and even to dispense with the bond requirement…." *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir. 1997). Courts in this District have accordingly declined to require bond for indigent plaintiffs like Fernando, *Doe by Doe v. Perales*, 782 F. Supp. 201, 206 (W.D.N.Y. 1991), as well as where, as here, lawsuits vindicate important federal rights or public interests, *Ward v. New York*, 291 F. Supp. 2d 188, 211 (W.D.N.Y. 2003); *see also Donohue v. Mangano*, 886 F. Supp. 2d 126, 163 (E.D.N.Y. 2012). The Court should do the same here.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for a preliminary injunction and order his immediately release.

DATED: November 14, 2025
New York, New York

Respectfully Submitted,

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