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

Roberto Antonio CABRERA MARTINEZ, Petitioner, v. Edward NEWMAN, Acting Director of the Buffalo Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General, Respondents.	)	Case No.: 25-cv-1110 (LJV) Agency No.: A[redacted]

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND IN OPPOSITION TO MOTION TO DISMISS

Petitioner, Roberto Antonio Cabrera Martinez, is a Nicaraguan asylum seeker who has moved this Court for a preliminary injunction ordering his release from Immigration and Customs Enforcement ("ICE") custody. *See* Dkt. No. 7.[1] The Government has filed a motion to dismiss, which doubles as an opposition to the preliminary injunction motion. *See* Dkt. No. 8. In opposition to Petitioner's request for release, the Government falls back on a familiar refrain. It claims that Petitioner, who was formally invited to live and work in the United States pursuant to then-presidential policy, continues to this day to be "arriving" in this country. As such, the Government argues that section 235 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225, applies, and also that the Constitution doesn't. In so arguing, the Government leans heavily on *Dep't of Homeland Sec'y v. Thuraissigiam*, 591 U.S. 130 (2020), and attempts to distinguish this Court's

[1] The motion makes reference to Exhibits labeled "A" through "F," but were mistakenly omitted from the filing. Counsel apologizes for the oversight, and hereby submits these documents as attachments to the instant reply, which employs the same letter labels as the motion. The Government has not been prejudiced because all proposed exhibits consist of documentation previously provided by Petitioner to the Government, or in most cases vice-versa.

decision in *Mata Velasquez v. Kurzdorfer*, No. 25 Civ. 493 (LJV), 2025 WL 1953796 (W.D.N.Y. Jul. 16, 2025). Its arguments are unconvincing.

Part I of this reply summarizes the Government's argument. Parts II and III explain why Petitioner is not subject to mandatory detention under the INA. And Part IV explains why the Constitution does, in fact, apply to Petitioner's detention.

I. The Government's argument reduces in all respects to an assertion that Petitioner is an "arriving alien" subject to mandatory detention and without constitutional rights.

We begin by noting that while the Government purports to go through the *Winter* preliminary injunction factors one at a time, its argument boils down in its entirety to an assertion that Petitioner is an "arriving alien," and therefore (a) is subject to section 1225 mandatory detention and (b) lacks any constitutional right to due process. Naturally, this assertion is the basis for its assessment of Petitioner's likelihood of success on the merits. *See* Dkt. No. 8-1 at 2 (claiming that Petitioner "has not established a likelihood of success on the merits" because he "is without a doubt an arriving alien"). But it is also the basis of the Government's claim that Petitioner's detention does not qualify as irreparable harm. *See id.* at 5 ("[I]rreparable harm . . . results from the application of the wrong detention statute, subjecting the alien to mandatory detention under the wrong statute when the correct statute allows for a bond hearing. But [Petitioner] can make no such argument here—he is subject to § 1225(b) and mandatory detention."). It is likewise indispensable to the Government's balancing of equities calculus. *See id.* at 6 ("In terms of the balance of equities and public interest, [Petitioner's] claimed interest is liberty, but he has no right to it as an arriving alien seeking entry into this country.").

Given that its classification of Petitioner as currently "arriving" underpins every aspect of the Government's argument, one would expect counsel to devote at least a paragraph to explaining how Petitioner, who flew here two years ago on the Government's invitation, fits the bill. Instead, it begs the question, claiming it is not in "doubt." *Id.* at 2.

II. Petitioner's recent classification as an "arriving alien" is inconsistent with the terms of the Nicaraguan Parole Process under which he entered the United States more than two years ago.

As the Government correctly states, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." Dkt. No. 8-1 at 2 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Of course, Petitioner was not "denied entry." On the contrary, he was formally *invited* to come to our country pursuant to presidential policy. *See* Exh. C (travel authorization); *see also* Dep't of Homeland Sec'y, *Implementation of a Parole Process for Nicaraguans*, 88 Fed. Reg. 1255 (Jan. 9, 2023).[2] It is worth pausing briefly to discuss the exact process that Petitioner, and other parolees like him, were required to follow in order to come here.

Under the "Nicaraguan Parole Process," 88 Fed. Reg. at 1255, "a supporter in the United States must initiate the process on behalf of a Nicaraguan national (and certain non-Nicaraguan nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed," *id.* at 1256. "In addition to the supporter requirement, Nicaraguan nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only

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[2] As noted previously, the so-called "CHNV" parole programs have been terminated. *See* Dep't of Homeland Sec'y, *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025).

those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case- by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry." *Id.* "A grant of parole under this process is for a temporary period of up to two years," in order to "enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States." *Id.* "Those who are not granted asylum or any other immigration benefit during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires." *Id.*; *see also id.* at 1263–64 (setting forth eligibility and procedural requirements in greater detail). When it announced this program and invited Petitioner to our shores, the Government expressed its view that "[t]he temporary, case-by-case parole of qualifying Nicaraguan nationals pursuant to this process will provide a significant public benefit for the United States." *Id.* at 1256.

Of note, the Nicaraguan Parole Process contemplates placing its former parolees directly into "removal proceedings" under 8 U.S.C. § 1229a, rather than expedited removal proceedings under section 1225(b)(1). (The latter, discussed in more detail in the next part, being the process that generally would apply to an "arriving alien" parolee.) Indeed, to the extent that the announcement references expedited removal at all, it does so in order to *distinguish* those who are subject to expedited removal *from* the parolees invited into the country via the Nicaraguan Parole Process itself. *See* 88 Fed. Reg. at 1260 ("Implementation of this parole process is contingent on the [government of Mexico's] acceptance of Nicaraguan nationals who voluntarily depart the United States, those who voluntarily withdraw their application for admission, and *those subject*

to expedited removal who cannot be removed to Nicaragua or another designated country." (emphasis added)). An "arriving alien" charged as removable under 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) is, by definition, amenable to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(i). And it is not disputed that the Government has charged Petitioner as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See* Dkt. No. 6 at 5. In order to conclude, as the Nicaraguan Parole Process announcement indicates, that Petitioner is *not* subject to expedited removal, it is necessary to accept the proposition that he is not "arriving" within the meaning of 8 U.S.C. § 1225.

Indeed, the connection between expedited removal and mandatory detention of "arriving aliens" was previously discussed by this Court in the context of a CHNV parolee:

> The government appears to argue that because it seeks to put Mata Velasquez into expedited removal proceedings, his detention is per se lawful. *See* Docket Item 42 at 13 (explaining that "Congress has decided that for arriving [noncitizens] subject to the process of expedited removal, detention is mandatory" (citing 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV))). According to the government, "there are no statutory provisions allowing [Mata Velasquez] to challenge his detention; it is mandated by statute." *Id.* In other words, the government seems to be saying that regardless of Mata Velasquez's parole, if it puts him in expedited removal proceedings, it has a new basis for his detention that effectively annuls his previous grant of parole. **If Mata Velasquez is not in expedited removal proceedings, however, that argument no longer works.**

Mata Velasquez, 2025 WL 1953796, at *8 (alterations in *Mata Velasquez*; emphasis added). Here, the Government doesn't even argue that Petitioner is subject to expedited removal. Rather, it is undisputed "that he is not currently in expedited removal proceedings and that he cannot be placed in expedited proceedings." *Id.*

III. Subjecting Petitioner to detention under section 1225(b) would stretch the plain language of that statute past its breaking point.

As an initial matter, we would point out that the Government does not clearly articulate which provision of section 1225 it is purporting to apply to Petitioner. In support of the premise that "[a]rriving aliens must be detained," Dkt. No. 8-1 at 2, it cites both 1225(b)(1)(B)(iii)(IV), which concerns individuals applying for asylum in expedited removal proceedings, as well as 1225(b)(2)(A), which applies generally to all "applicant[s] for admission" who are actively "seeking admission" and are not "clearly and beyond doubt entitled to be admitted." The Government does not assert that Petitioner is now or has ever been in expedited removal proceedings. *See generally* Dkt. No. 8-1. And it disclaims any reliance on Board of Immigration Appeals ("BIA") precedent applying 1225(b)(2)(A) to an individual, like Petitioner, who was paroled years prior into the United States. *See* Dkt. No. 8-1 at 5 n.5 ("[Petitioner] also refers to the *Q Li* and *Hurtado* decisions, ECF No. 7 at pg. 6, n. 3, but those cases have nothing to do with this case." (referencing *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (holding that former parolees are mandatorily detained under section 1225(b)(2)); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (expanding that rule to cover all "applicants for admission")).

The Government appears to glean from a *gestalt* reading of 1225's various subsections that anybody to whom it affixes the label of "arriving alien" under 8 C.F.R. § 1.2 is automatically subject to mandatory detention. *See* Dkt. No. 8-1 at 2. But statutory interpretation does not work that way. The statute applies by its plain terms to certain specified categories of noncitizens. Pursuant to 1225(b)(1), it covers individuals subject to expedited removal. On the other hand, under 1225(b)(2), it applies to those actively "seeking admission." The Government does not attempt to argue that Petitioner falls in the first category. *See generally* Dkt. No. 8-1. And it

disavows the only administrative decisions which would support placing Petitioner in the second. *See id.* at 5 n.5. To the extent that it *does* rely on 1225(b)(2), its capacious reading of that provision is untenable in this case for all of the same reasons that have led a tidal wave of district courts to reject it—succinctly, its "construction of § 1225(b)(2)(A) 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." *Artiga v. Genalo*, No. 25 Civ. 5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (citing *J.U. v. Maldonado*, No. 25 Civ. 4836 (OEM), 2025 WL 2772765, at *7 (E.D.N.Y. Sept. 29, 2025)).[3]

[3] *See also Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) ("Indeed, in the approximately two and one-half-months since Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected Respondents' novel and illogical interpretation of the INA." (citing *Lopez Benitez*, 2025 WL 2371588; *Mata Velasquez*, 2025 WL 1953796; *Lepe v. Andrews*, No. 25 Civ. 1163 (KES), 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Barrera v. Tindall*, No. 25 Civ. 541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser*, No. 25 Civ. 6487 (PCP), 2025 WL 2650637 (N.D. Cal. Sep. 16, 2025); *Pizarro Reyes v. Raycraft*, No. 25 Civ. 12546 (RJW), 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025); *Doe v. Moniz*, No. 25 Civ. 12094 (IT), 2025 WL 2576819 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No. 25 Civ. 2180 (DMS), 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); *Lopez-Campos v. Raycraft*, No. 25 Civ. 12486 (BRM), 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 25 Civ. 1093 (JE), 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *dos Santos v. Noem*, No. 25 Civ. 12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. 25 Civ. 2157 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. Jul. 7, 2025))); *see also Echevarria v. Bondi*, No. 25 Civ. 3252 (DWL), 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025) (relying on some of the same cases as *Hyppolite*, while also citing *Hasan v. Crawford*, 25 Civ. 1408 (LMB), 2025 WL 2682255 at *9 (E.D. Va. Sep. 19, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); and *Vazquez v. Feeley*, No. 25 Civ. 1542 (RFB), 2025 WL 2676082, at *16 (D. Nev. Sep. 17, 2025)).

IV. Assuming *arguendo* that Petitioner has been "arriving" in the United States for over two years now, he still has a constitutional right to be free from arbitrary detention.

In support of its constitutional argument, the Government relies on the so-called entry fiction. *See, e.g.*, *Al-Thuraya v. Warden, Orange County Correctional Facility*, No. 25 Civ. 2582 (AS), 2025 WL 2858422, at *3 (S.D.N.Y. Oct. 9, 2025) ("Against the general rule that due process applies to all persons, courts have recognized an exception known as the 'entry fiction.' Under the entry fiction, an applicant for admission to the country is treated as if he were stopped at the border for the purposes of his application for admission. In other words, while a person seeking legal entry into the United States may be granted physical entry into the country pending the determination of his application for admission, the mere fact of his physical presence within our borders provides him no greater constitutional protection *as to his application* than if he were outside the country. This narrowly-tailored legal fiction exists to accommodate the political branches' broad prerogative to exclude." (citations omitted, emphasis in original))). On the Government's theory, the United States border is something akin to the event horizon of a black hole—as Petitioner's plane approached it, time would have appeared to break down, or at least ceased to have any meaning, and he is still "arriving" on our shores to this day. It is less a legal fiction than the stuff of science fiction.

Relying largely on *Thuraissigiam*, *supra*, the Government contends that Petitioner, trapped in a state of forever "arriving" in the United States, has no constitutional rights whatsoever. This Court rejected that argument in *Mata Velasquez*, *supra*, and the Government's attempt to distinguish that case is not especially compelling. It maintains that the Court's reasoning in *Mata Velasquez* was limited to the termination of parole, and thus would not apply to Petitioner, whose

parole period had run. *See* Dkt. No. 8-1 at 3. But what the Court held in *Mata Velasquez* is that "[w]hile *Thuraissigiam* forecloses the argument that [an arriving noncitizen] has due process rights beyond those provided by statute concerning the process for deciding whether or not he will be *admitted* to this country, it does not foreclose his arguments regarding parole revocation *and release*." 2025 WL 1953796, at *15 (first emphasis in original; second added).

As the Court explained, adopting the Government's extreme version of the entry fiction would produce simply unacceptable—indeed, outrageous—results:

> Indeed, as this Court previously observed in the context of prolonged detention, "although noncitizens 'on the threshold of initial entry' may have fewer due process rights than other 'persons,' the government's argument—that *Mezei*'s[4] statement that 'whatever the procedure authorized by Congress is due process as far as a noncitizen denied entry is concerned,' is to be taken literally—cannot be correct." *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 316 (W.D.N.Y. 2019) (internal citations omitted); *see also Birch v. Decker*, 2018 WL 794618, at *6 (S.D.N.Y. Feb. 7, 2018) ("As a threshold matter, it is clear that noncitizens detained on U.S. soil, regardless of whether they have been formally 'admitted' under 8 U.S.C. § 1101(a)(13)(A), are entitled to *some* due process protection. That protection is undoubtedly diminished—both vis-à-vis citizens and immigrants who have effected an entry (legally or illegally)—but it nonetheless exists in some form." (emphasis added)). Were it true that "arriving" noncitizens have *no* due process rights, it would mean that such individuals—including those living freely among us on parole—could "be subjected to the punishment of hard labor without a judicial trial." *Clerveaux*, 397 F. Supp. 3d at 316 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 704, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (Scalia, J., dissenting)). And it would mean that a noncitizen living here on parole could be taken into custody and beaten by local police without any violation of the Fourth Amendment. That cannot be the law.

Mata Velasquez, 2025 WL 1953796, at *16 (alterations adopted; emphasis in original).

And this Court in *Mata Velasquez* further relied on *United States ex rel. Paktorovics v. Murff*, 260 F.2d 610 (2d Cir. 1958), noting as follows:

> Moreover, *Thuraissigiam* relies on *Mezei* for the proposition that noncitizens "who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" 591 U.S. at 139, 140 S.Ct. 1959 (quoting *Mezei*, 345 U.S. at 215, 73 S.Ct.

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4 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

> 625). As explained above, however, *Paktorovics* distinguished *Mezei* because the petitioner and his family had been "invited here pursuant to the announced foreign policy of the United States." 260 F.2d at 613–14. So, too, was Mata Velasquez invited here—which was not the case for the petitioner in *Thuraissigiam.* Thus, nothing in *Thuraissigiam* overrules *Paktorovics.*

2025 WL 1953796, at *16. Like the petitioners in *Paktorovics* and *Mata Velasquez*, Petitioner indisputably was "invited here pursuant to the announced foreign policy of the United States." And the lapse of his two-year parole period cannot undo that historical fact, such that it becomes constitutionally permissible to "summar[ily] arrest and det[ain] [him] on the mere say-so of a government official." *Cardin Alvarez v. Rivas*, No. 25 Civ. 2943 (CDB), 2025 WL 2898389, at *16 (D. Ariz. Oct. 7, 2025) (quoting *Mata Velasquez*, 2025 WL 1953796, at *14).

Conclusion

In light of the foregoing, and for the reasons set forth in Petitioner's motion, the Court should issue a preliminary injunction directing the Government to release Petitioner forthwith. The Government's cross-motion to dismiss should be denied.

Dated: November 14, 2025
Brooklyn, New York

/s/ Reuben S. Kerben
Attorney for Petitioner

Exhibit List

A. Form I-589, Application for Asylum and for Withholding of Removal (filed Dec. 17, 2024)

B. Most Recent I-94 (accessed Nov. 5, 2025)

C. Travel Authorization Notice

D. Approval Notice, Form I-765, Application for Employment Authorization (issued Jul. 6, 2023)

E. ICE Detainee Locator (accessed Nov. 5, 2025)

F. Automated Case Information (accessed Nov. 5, 2025)