

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.: 

**PETITIONER’S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION AND IN OPPOSITION TO MOTION TO DISMISS**

Petitioner seeks habeas relief from the Court, and has moved for a preliminary injunction ordering his immediate release. *See* Dkt. No. 7. The Government opposes the petition and preliminary injunction motion, and has cross-moved to dismiss. *See* Dkt. No. 8-1. This Court heard oral argument on November 24, 2025, and has requested additional briefing on a number of questions. The Government has filed some letters. *See* Dkt. Nos. 10–11. Petitioner hereby submits the instant memorandum of law in hopes of clarifying some of the issues which the Government has thoroughly muddled.

Here is the bottom line. The Government claims that Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2). But that provision requires that someone be “seeking admission.” And in order to hold that Petitioner is “seeking admission,” it is necessary to conflate the term “seeking admission” with the statutorily-defined term “applicant for admission,” even though the statute uses *both*, which would traditionally suggest they carry independent weight. Indeed, the Board of Immigration Appeals (“BIA”) has held that these terms *are* interchangeable—first in

Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), and shortly thereafter in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). But the Government knows that the reasoning in these decisions is indefensible, having been rejected by every judge in this circuit to consider it, and so it insists that “those cases have nothing to do with this case.” Dkt. No. 8-1 at 5 n.5. Instead of making the *Q. Li*- and *Yajure Hurtado*-based arguments it needs to, the Government attempts to distract from the key issues by instead litigating whether Petitioner is an “arriving alien.” But the provision it is asking this Court to apply—subsection (b)(2)—doesn’t even *mention* arriving aliens, who are dealt with instead in subsection (b)(1)—a provision the Government appears to concede doesn’t apply, because Petitioner was never in expedited removal proceedings.

Thus, the Government’s statutory argument is an atextual distraction—a smokescreen, designed to obscure the doctrinal reality that the *only* way the Government can win its case is if *this* Court does what *no other* court in the circuit has done: adopt the BIA’s novel interpretive holding in *Q. Li* and *Yajure Hurtado*. For the reasons explained more thoroughly in parts I and II, the Court should see through the Government’s argument, reject its underlying position, and order that it release Petitioner immediately. Parts III and IV address ancillary issues.

I. The Government’s argument focuses on whether Petitioner should be considered an “arriving alien.” Notwithstanding the Government’s myopic focus on this point, a person’s classification as an “arriving alien” is not actually dispositive on the question of whether they are subject to mandatory detention under 8 U.S.C. § 1225(b). In fact, subsection (b)(2), which is the provision which the Government has now orally argued applies to Petitioner, does not discuss arriving aliens at all.

As in other recent cases, the Government’s “arguments are imprecise and shifting.” *Rodriguez-Acurio v. Almodovar*, No. 25 Civ. 6065 (NJC), ECF No. 25 at 26 (E.D.N.Y. Nov. 28, 2025). To wit, in its initial filing, the Government did not actually say *which* portion of section 1225(b) it claims applies to Petitioner. *See generally* Dkt. No. 8-1. As noted in Petitioner’s reply, the Government seemingly argued that *anyone* classified as an “arriving alien” is subject to

mandatory detention under that section. *See* Dkt. No. 9 at 6–7. But the statute, of course, doesn’t say that. *See id.* For illustrative purposes, here is a split-screen comparison—the statute as written on one side, and the Government’s preferred reading on the other:

This is what section 1225(b) says about arriving aliens:

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, **the officer shall refer the alien for an interview by an asylum officer** under subparagraph (B).

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

Here is what the Government seems to *think* the statute says:

(A) Screening

(i) In general

~~If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.~~

~~(ii) Claims for asylum~~

~~If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).~~

~~(B) Asylum interviews~~

~~(i) Conduct by asylum officers~~

~~An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.~~

~~(ii) Referral of certain aliens~~

~~If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.~~

8 U.S.C. § 1225(b)(1) (emphasis added).¹ The astute reader will note that the Government's preferred reading does not just omit a great many words from the original text—it also would only support the application of subsection (b)(1) to Petitioner, rather than subsection (b)(2). But the Government claims that subsection (b)(2) is the one that applies. How does that make sense? The simple answer: It doesn't.

We are interpreting a statute. The question is whether Petitioner falls within one of the classes of aliens which that statute “unequivocally mandate[s] . . . ‘shall’ be detained.” *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). There are, broadly speaking, *two* such classes of aliens. The *first* class is addressed in section 1225(b)(1). These are, essentially, aliens in expedited removal proceedings. Here is what the statute says about them, in relevant part:

- “If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution,” 8 U.S.C. § 1225(b)(1)(A)(i);
- “If . . . the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer,” *Id.* § 1225(b)(1)(A)(ii); and

¹ There does exist a *regulation* which purports to bar immigration judges from considering bond requests by “arriving aliens,” though it does not state their detention is mandatory. 8 C.F.R. § 1003.19(h)(2)(i)(B). The Government has not invoked this regulation, which appears to have no grounding whatsoever in any immigration detention statute. Other aspects of this same custody regulation have been found to be ultra vires. *See, e.g., Jacinto v. Trump*, 25 Civ. 3161 (JFB), 2025 WL 2402271, at *5 (D. Neb. Aug. 19, 2025) (holding that “the automatic stay provision, . . . 8 C.F.R. § 1003.19(i)(2)[,] exceeds the statutory authority Congress gave to the Attorney General[] ‘[b]ecause [its] back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by DHS, [and thus] flouts the express intent of Congress and is ultra vires to the statute’” (alteration adopted) (quoting *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004))).

- “If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . the alien *shall be detained* for further consideration of the application for asylum,” *Id.* § 1225(b)(1)(B)(ii) (emphasis added).²

The *second* class of persons subject to mandatory detention is described in section 1225(b)(2). These are, essentially, all other “applicant[s] for admission” who are actively “seeking admission” to which they are not “clearly and beyond a doubt entitled.” *Id.* § 1225(b)(2) (“[I]n 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.” (emphasis added)).

Does Petitioner fall into one of these two classes? Up until oral argument, the Government had insisted that he did, but it had not bothered to tell us which one. Now, it claims he falls in the *second* category. But confusingly, the Government continues to assert that he falls in that category because he is an “arriving alien,” even though arriving aliens are addressed in the portion of the statute dealing with the *first* class, and not the *second*. Its argument is nonsensical, seemingly eschewing statutory text altogether. It is also incorrect.

In order to fall within subsection (b)(2), Petitioner would need to be “seeking admission.” 8 U.S.C. § 1225(b)(2). But he isn’t. Petitioner, as the Government recognizes, is seeking *asylum*. And “asylum is not an ‘admission.’” *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (first headnote). Indeed, if things go according to plan, Petitioner will never need to seek an admission.³ Thus, the

² The statute separately provides that someone found *not* to possess a credible fear of persecution “shall be detained . . . until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV).

³ An asylee may adjust status to that of a lawful permanent resident, *see* 8 U.S.C. § 1159(b), who in turn may be naturalized a citizen, *see id.* § 1427, all without ever seeking “admission” as that term is defined by statute, *id.* § 1101(a)(13)(A).

only way to conclude that Petitioner is a noncitizen “seeking admission” is to treat that phrase as interchangeable with the statutorily-defined term “applicant for admission,” which includes “[a]n[y] alien present in the United States who has not been admitted *or* who arrives in the United States.” 8 U.S.C. § 1225(a)(1) (emphasis added). If that argument—an “applicant for admission” is per se “seeking admission” and thus mandatorily detained under 1225(b)(2)—sounds familiar, well, there’s a *reason* the Court may be experiencing déjà vu.

II. The Government is arguing out of both sides of its mouth. It claims that recent BIA decisions—*Q. Li* and *Yajure Hurtado*—which have been roundly rejected by the judiciary, have “nothing to do with this case.” But what it is asking this Court to do is apply precisely the same reasoning of those erroneous cases to Petitioner’s situation. There is zero daylight between the BIA’s analysis in *Q. Li* and the Government’s statutory claims here, except perhaps that the BIA’s logic is at least coherent, if unconvincing.

At bottom, what the Government is asking this Court to do is apply *Matter of Q. Li*, 29 I&N Dec. 66. In *Q. Li*, the Government “encountered [a noncitizen] approximately 5.4 miles away from a designated port of entry and 100 yards north of the border. [She] told the officer that she lacked any documents allowing her to legally enter or remain in the United States. The officer arrested her without a warrant and took her to a processing center. The next day, DHS released [her] from detention into the United States on parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A) (2018).” *Id.* at 67. Years later, the Government rearrested the same person, and subsequently “conclude[d] that [she] [wa]s detained under section 235(b)(2)(A),” 8 U.S.C. § 1225(b)(2)(A). *Id.* at 66. Petitioner’s situation is largely analogous: he arrived in the United States, was paroled into the country, and subsequently detained years later on the argument that he is subject to mandatory detention under 1225(b)(2).

This makes it puzzling, at least at first blush, that the Government has disclaimed any reliance on *Q. Li*. In its actual briefing, the Government *insists* that “*Q[.] Li . . . ha[s]* nothing to

do with this case.” Dkt. No. 8-1 at 5 n.5. What on earth is the Court to make of this? The Government is clearly *advocating* for the rule announced in *Q. Li* (that former parolees fall within section 1225(b)(2)), while at the same time vocally *disavowing* that case (indeed, wanting “nothing to do with” it). Probably, the Government wants “nothing to do with” *Q. Li* because it recognizes that decision for the albatross that it is. In *Q. Li*, the Government applied subsection 1225(b)(2) to a former parolee because it found she was an “applicant for admission.” 29 I&N Dec. at 68. The Government held that anyone deemed an “applicant for admission” must similarly be deemed to be “seeking admission.” *Id.* And it held that this was sufficient to place someone in the category of persons subject to mandatory detention under section 1225(b)(2). Yes, the Government held that the former parolee in *Q. Li* was an “applicant for admission” because she was “arriving” in the country at the time of her apprehension and parole. *Id.* But the statutory definition of an “applicant for admission” doesn’t just cover those “arriving” here—it *also* includes “[a]n[y] alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). So, in order to mandatorily detain arriving aliens outside of expedited removal proceedings, one logically must apply the same mandatory detention rule to *all* persons present in the United States without admission. In other words, you can’t have *Matter of Q. Li* without *Matter of Yajure Hurtado*.

As the Government is no doubt aware, it has had what we shall politely call *limited* success defending this line of BIA decisions in court. *See, e.g., Guzman Cardenas v. Almodovar*, No. 25 Civ. 9169 (JMF), 2025 WL 3215573, at *3 (S.D.N.Y. Nov. 18, 2025) (chastising government attorneys for failing to “acknowledge that their position has been rejected by the overwhelming majority of district judges to consider the issue, including every single one in this Circuit”). Evidently, it does not wish to do so here, and therefore obscures its reliance on *Q. Li* behind a nebulous smokescreen of formless and shifting statutory arguments. The Court should reject the

Government's proffered rule, announced in *Q. Li* and later applied in *Yajure Hurtado*, for broadly the same reasons that "scores of decisions [] in this Circuit and beyond" have done so. *Id.* at *2 (collecting cases). Namely, *Q. Li*'s "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)). "By a recent count," the BIA's analysis in *Q. Li* and *Yajure Hurtado* "has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant." *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), ECF No. 28 at 9–10 (S.D.N.Y. Nov. 26, 2025).

III. This Court has requested case law responsive to the question of whether an individual whose parole has expired is properly classified as an "arriving alien," and whether such persons have constitutional rights. Petitioner was able to locate the following decisions that may assist the Court in its analysis.

One potentially relevant case is *Salgado Bustos v. Raycraft*, 25 Civ. 13202 (NGE), 2025 WL 3022294 (E.D. Mich. Oct. 29, 2025). This case also involved a Nicaraguan national, though the individual in question did not arrive through a government-sponsored parole program. Rather,

Mr. Salgado Bustos . . . unlawfully entered the United States without inspection or admission near Calexico, California, on November 20, 2022. A Customs and Border Patrol (CPB) official encountered and arrested Salgado Bustos at the border. An immigration officer determined Salgado Bustos entered the United States unlawfully, lacking valid immigration documents, which rendered him inadmissible under 8 U.S.C. § 1182(a)(6) and (a)(7). During his detention, Salgado Bustos claimed that he feared persecution if he was returned to Nicaragua.

On November 22, 2022, the Department of Homeland Security (DHS) granted Salgado Bustos temporary parole under 8 U.S.C. § 1182(d)(5)(A) and released him into the United States. DHS issued Salgado Bustos a Form I-385 Notice to Report, which required him to report to a U.S. Immigration and Customs Enforcement (ICE) office near his final destination within 60 days. Salgado Bustos reported to the ICE Detroit office as directed on January 20, 2023. At the check in, he received a DHS Form G-56 Call-In Letter, which required him to present himself to the Detroit ICE office on March 26, 2025, for “processing and issue NTA [Notice to Appear].”

Salgado Bustos reported to the Detroit ICE office on March 26, 2025. By this time, he had been living continuously in Ann Arbor, Michigan for over two years. He had a pending asylum application with United States Citizenship and Immigration Services (USCIS) since November 20, 2023. USCIS issued him a work permit on May 18, 2024. Salgado Bustos's parole expired in 2023, but he had [sic] not re-detained. On March 26, 2025, ICE did not issue Salgado Bustos a Notice to Appear (NTA) or an order of expedited removal. Rather, ICE officers instructed him to return for a follow-up check-in with all of his immigration documentation on September 28, 2025.

Salgado Bustos went to the ICE Detroit office on Sunday, September 28, 2025, but the office was closed. Salgado returned on September 29 and showed the ICE officer his asylum application, a photo of his work permit, which was valid through 2029, and his passport. The ICE officer arrested Salgado Bustos and entered an order of expedited removal under 8 U.S.C. § 1225(b)(1)(A)(iii).

2025 WL 3022294, at *1 (second alteration in original). “In his habeas petition, Salgado Bustos challenge[d] Respondents' application of the expedited removal procedures and mandatory detention provisions under 8 U.S.C. § 1225(b)(1). . . . Salgado Bustos maintain[ed] that Respondents [we]re holding him in physical custody without following the INA and its regulations, and in violation of his due process rights under the U.S. Constitution. As relief, Salgado Bustos . . . [sought] immediate release.” *Id.* at *2. Judge Edmunds obliged.

While the court in *Salgado Bustos* accepted “that the process due under the constitution is coextensive with the administrative immigration procedures provided by Congress,” it nevertheless “consider[ed] whether Salgado Bustos' due process rights ha[d] been violated” by the Government’s failure to “appl[y] the proper procedures” under the statute. *Id.* at *7. Specifically,

the Court considered Salgado Bustos's argument that "the government did not have the lawful authority to initiate § 1225(b)(1)'s expedited removal process against him after he had been paroled into the United States and [] lived in the country continuously for over two years," thus subjecting him to "mandatory detention under" that provision. *Id.* at * 3.

In concluding that the Government could not properly apply section 1225(b)(1) to a former parolee, the court in *Salgado Bustos* relied on the district court decisions in *Coalition for Humane Immigrant Rights v. Noem*, 25 Civ. 872 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025) ("*Coalition*"), and *E.V. v. Raycraft*, 25 Civ. 2069 (BYP), 2025 WL 2938594 (N.D. Oh. Oct. 16, 2025). Stated succinctly, what these and other cases hold is "that DHS's regulatory definition of 'arriving alien' [i]s *ultra vires* to the extent it subject[s] parolees to expedited removal proceedings." *E.V.*, 2025 WL 2938594, at *3 (quoting *Coalition*, 2025 WL 2192986, at *25); *see also id.* at *4 ("The Court is persuaded and joins the numerous district courts that hold § 1225 does not authorize expedited removal of noncitizens who have been paroled into the United States under either § 1225(b)(1)(A)(i) (arriving aliens) or § 1225(b)(1)(A)(iii)(II) (individuals not admitted or paroled into the United States and who have not been continuously present for at least two years, regardless of the status of that parole)." (citing *Coalition*, 2024 WL 2192986 at *30; *Munoz Materano v. Arteta*, 25 Civ. 6137 (ER), 2025 WL 2630826 at *11 (S.D.N.Y. Sep. 12, 2025); *Espinoza v. Kaiser*, 25 Civ. 1101 (JLT), 2025 WL 2675785, at *5 (E.D. Cal. Sep. 18, 2025); *Cardin Alvarez v. Rivas*, 25 Civ. 2943 (CDB), 2025 WL 2898389 at *13 (D. Ariz. Oct. 7, 2025), *adopted in relevant part*, No. 25 Civ. 2943 (GMS), 2025 WL 2899092 (D. Ariz. Oct. 10, 2025))).⁴

⁴ Again, counsel feels compelled to point out that these cases concerned mandatory detention under section 1225(b)(1), which contains what the *Coalition* court aptly dubbed "[t]he Arriving Aliens Provision." 2025 WL 2192986, at *27. To the extent that the Government is arguing for mandatory detention under subsection (b)(2), rather than (b)(1), Petitioner's "arriving alien" status is irrelevant. Still, if the Government opts to change course again in future, these cases help explain why it cannot subject parolees like Petitioner to expedited removal (and attendant mandatory detention) under section 1225(b)(1).

If *Salgado Bustos* set aside the broader constitutional question in favor of granting relief on statutory grounds instead, we also have examples of cases, such as *Rodriguez Cabrera v. Mattos*, which took the opposite approach:

Petitioner's status in light of his initial interception at the border and discretionary release on parole, which expired in December 2022, raises a separate statutory question this Court has not previously addressed: whether Petitioner's re-detention in 2025, years after his parole expired, renders him an “applicant for admission” under § 1225(b), according to 8 U.S.C. § 1182(d)(5)(a), which states that upon expiration of parole a noncitizen “shall forthwith return or be turned to the custody from which he was paroled . . . and continue to be dealt with in the same manner as that of any other applicant for admission.”

The Court finds, however, that it need not decide this statutory question to resolve Petitioner's due process challenge to his ongoing detention. The central inquiry for the Court is whether Petitioner's re-arrest and detention without the opportunity for release on bond satisfies due process. The Ninth Circuit has essentially reached this same conclusion in grappling with a challenge to mandatory detention under § 1225(b) in *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018). In *Rodriguez*, the Ninth Circuit stated: “We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so. Arbitrary civil detention is not a feature of our American government.” *Id.* at 256–57.

Accordingly, even if Petitioner's detention is mandated by his perpetual status as an “applicant for admission” due to his initial parole (which the Court doubts is a reasonable interpretation of the relevant statutory provisions), the Court must still consider whether his re-arrest and detention satisfies due process. For the following reasons, the Court finds it does not.

25 Civ. 1551 (RFB), 2025 WL 3072687, at *10 (D. Nev. Nov. 3, 2025) (alteration in original); *see also Ramirez Tesara v. Wamsley*, No. 25 Civ. 1723 (KKE), 2025 WL 3288295, at *2 (W.D. Wash. Nov. 2, 2025) (detention of noncitizen “months after his parole expired” did not comply with due process clause of the constitution); *Tenemasa-Lema v. Hyde*, 25 Civ. 13029 (BEM), 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025) (recognizing “DHS's statutory power to ‘return’ Petitioner to custody under section 1225 at the expiration of his parole,” but nevertheless holding that “[w]hatever theoretical route one takes, the only conclusion that makes sense . . . is that Petitioner

is a ‘person’ who cannot ‘be deprived of life, liberty, or property, without due process of law’” (quoting U.S. CONST. amend V)).

Some courts, including close to home, have found *both* arguments compelling. *See O.F.B. v. Maldonado*, 25 Civ. 6336 (HG), 2025 WL 3277677, at *5, 7 (E.D.N.Y. Nov. 25, 2025) (“The government attempts to distinguish Petitioner’s case from clear precedent by arguing that because his parole expired, he is no longer considered to be present in the country, but rather ‘restored to the status that he had at the time of parole.’ This argument, a tactic that other courts have referred to as the ‘entry fiction,’ is not relevant to the statutory analysis [And] regardless of whether Section 1225 or 1226 applies to the facts here, the application of the previously discussed *Mathews* test leads to the same inevitable conclusion: Petitioner has been, and continues to be[,] detained in violation of the Fifth Amendment.” (citations omitted)); *see also Padilla v. Bowen*, No. 25 Civ. 10780 (CAS), 2025 WL 3251368, at *8 (C.D. Cal. Nov. 21, 2025) (“Petitioner has demonstrated at least a serious question as to whether his detention violates his substantive due process rights by failing to serve any valid purpose. . . . [Moreover,] [t]his Court and the overwhelming majority of others have rejected the government’s interpretation of the statutory framework governing bond redetermination.”).

Last, but certainly not least, is Judge Choudhury’s very recent decision in *Rodriguez-Acurio*. There, in response to characteristically protean arguments by the Government, the court addressed, *inter alia*, whether a parolee-turned-asylum applicant fell within the “Arriving Aliens Provision” at 8 U.S.C. § 1225(b)(1)(A)(i), and concluded “based on the ordinary meaning of the plain text of the” statute that such an individual “is not an ‘arriving alien.’” 25 Civ. 6065 (NJ), ECF No. 25 at 42. Agreeing with much of the analysis in *Coalition*, the court held that “the plain meaning of the word ‘arriving’ is being ‘in the process of reaching’ a destination,” and “[t]he words

‘arriving,’ ‘arrival,’ and ‘arrive’ in Section 1225 appear to refer to a process that occurs upon physical entry into the United States, ‘not an interminable . . . status’ that attaches to a noncitizen upon arrival.” *Id.* at 43–44 (quoting 2025 WL 2192986, at *27–28) (final alteration in *Rodriguez-Acurio*). “In fact, even in *Ibragimov [v. Gonzales]*, where the Second Circuit deferred to the agency interpretation of ‘arriving alien’ in then-in-force 8 C.F.R. § 1.1(q), it nonetheless described humanitarian parole under Section 1182(d)(5)(A) as ‘a means by which the government allows aliens who *have arrived* at a port-of-entry to temporarily remain’ in the country even as the parolee has not been “admitted” to the United States.” *Id.* at 45 (quoting 476 F.3d 125 (2d Cir. 2007)) (emphasis in *Rodriguez-Acurio*). “In effect, ‘when ICE affirmatively chooses to release an individual on parole, it has made the determination that it no longer intends to fast-track their removal and that it will proceed with the standard removal process under 8 U.S.C. § 1229a.’” *Id.* at 46–47 (quoting *Aviles-Mena v. Kaiser*, No. 25 Civ. 6783, 2025 WL 2578215, at *5 (N.D. Cal. Sept. 5, 2025)).

IV. We close with some final thoughts about why Petitioner should not be understood to be “arriving” at this time. As explained in parts I and II, it doesn’t matter whether he *is*, since the Government is only arguing for mandatory detention under 1225(b)(2), which by the Government’s logic would apply irrespective of whether Petitioner is “arriving” or is (as he maintains) “present” without being “admitted.” But because the Government continues to hammer on this point, and as a contingency in the event that its amorphous litigation position is hereafter “clarified” to encompass subsection (b)(1) instead of or in addition to (b)(2), we include these observations.

The fact that the Government previously recognized Petitioner as an asylum seeker by granting him employment authorization, pursuant to 8 C.F.R. §§ 208.7 and 274a.12(c)(8), cuts against its current classification of Petitioner as “arriving.” Asylum is available to both “alien[s] . . . physically present in the United States” and also to those “who arrive[] in the United States.” 8 U.S.C. § 1158(a). But those “present” and those “arriving” are not treated equally—that is because

asylum seekers “may apply for asylum in accordance with [] section [1158] or, where applicable, section 1225(b).” *Id.* And for those “arriving,” “section 1225(b)” is “applicable.” *See* 8 U.S.C. § 1225(b)(1) (“If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer *shall* refer the alien for a [] [credible fear] interview by an asylum officer.” (emphasis added)). So, the fact that Petitioner is in section 1158 asylum proceedings without ever having been placed in section 1225(b)(1) expedited removal proceedings is a strong indication that the Government has not previously sought to treat him as “arriving.”

Treating Petitioner as “arriving” is also, as previously noted, inconsistent with the terms of the Nicaraguan Parole Program through which he entered the country. *See* Dkt. No. 9 at 3–5. The Government claimed at oral argument that the terms of the Process’s implementation were vague, such that an individual permitted entry to the United States via that program might later be subject to either removal proceedings under 8 U.S.C. § 1229a, or expedited proceedings under section 1225, presumably at the Government’s whim. And it has provided a recent parole termination notice reflecting this understanding. *See* Dkt. No. 11-1. But its claim cannot be squared with the plain language the Government used *at the time* it invited Petitioner to come here.

It is no secret that the current presidential administration dislikes the “categorical parole programs” created by its predecessor administration. *Id.*; *see also* Dep’t of Homeland Sec’y, *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025); *see also* Exec. Order 14165, *Securing our Borders*, 90 Fed. Reg. 8467 (“Over the last 4 years, the United States has endured a large-scale invasion at an unprecedented level. Millions of illegal aliens from nations and regions all around the world successfully entered

the United States where they are now residing, including potential terrorists, foreign spies, members of cartels, gangs, and violent transnational criminal organizations, and other hostile actors with malicious intent.”). But that does not give the Government license to engage in historical revisionism across the pages of the Federal Register.

Contrary to the Government’s new position, the terms of the Process itself were unambiguous. Qualifying individuals were invited to come here and apply for parole. *See* Dep’t of Homeland Sec’y, *Implementation of a Parole Process for Nicaraguans*, 88 Fed. Reg. 1255, 1256 (Jan. 9, 2023) (“[T]hose 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.”). Some invitees might not pass this screening, and the Government explained what would happen to these people: They were expected to “voluntarily depart the United States, . . . voluntarily withdraw their application for admission, . . . [or else be] subject to expedited removal.” *Id.* at 1260. “Implementation of this parole process,” in fact, was “contingent on the [government of Mexico’s] acceptance of” such persons. *Id.*

Those who *passed* the screening, who *were* allowed entry into our country in order “to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States,” would *not* be subject to expedited removal. *Id.* at 1256. If they refused to “depart” voluntary, they would instead “be placed in removal proceedings after the period of parole expires.” *Id.* This reference to “removal proceedings” can only reasonably be read to refer to section 1229a proceedings: The document elsewhere refers to “expedited” removal proceedings when describing the process under section 1225, and—as the Government notes—section 1229a *is* the default provision. *See* Dkt. No. 10 at 2 n.1 (citing 8 U.S.C. § 1229a(a)(3) (“Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and

exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”)).

Petitioner was invited here. He was told he could apply for asylum here. He was permitted—some might say expected—to work here. The Government should not be allowed to arbitrarily rearrest him months after his parole expired when the purposes of his parole have yet to be served. *Cf. G.G. v. Kaiser*, No. 25 Civ. 1471 (HC), 2025 WL 3254999, at *6 (E.D. Cal. Nov. 22, 2025) (“Under the circumstances of this case, where immigration officials provided to petitioner a document stating that he was released ‘pending a final decision’ in his removal proceedings, petitioner had not even had his initial hearing in those removal proceedings, and petitioner was granted a five-year work authorization permit during his year on parole status, petitioner reasonably maintained a liberty interest in his release pending a final removal decision in his immigration case. This conclusion is bolstered by the fact that the applicable regulations provide that if a non-citizen is re-detained after parole expires, they ‘shall again be released on parole’ if their ‘exclusion, deportation, or removal order cannot be executed within a reasonable time’ 8 C.F.R. § 212.5(e)(1), (e)(2)(i). Here, not only is there is no removal order against petitioner, but petitioner had also not even had an initial hearing in his removal proceedings when agents re-detained him.”); *cf. also Guerra v. Woosley*, 25 Civ. 119 (RGJ), 2025 WL 3046187, at *4 (W.D. Ky. Oct. 31, 2025) (“Guerra, who was paroled upon entry into the United States through the CHNV program, cannot later be designated for expedited removal.”).

Conclusion

In light of the foregoing, the Court should reject the Government's disingenuous arguments, and order it to release Petitioner immediately.

Dated: November 30, 2025
Brooklyn, New York

/s/ Reuben S. Kerben
Attorney for Petitioner