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

Anthony Yaniel ZELEDON,

Petitioner,

– against –

Tammy MARICH,¹ 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.

No. 25-cv-6623 (MAV)

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS AND IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Anthony Yaniel Zeledon (“Petitioner”) seeks a writ of habeas corpus directing his release from his immigration detention, which has been carried out without process and under the wrong statutory authority. *See* Dkt. No. 1. By way of response, Respondents (hereinafter the “Government”) have filed a motion to dismiss, primarily on jurisdictional grounds. *See* Dkt. No.

¹ Petitioner erroneously named Edward Newman as ICE’s Buffalo Field Office Director. Newman is the director of the Buffalo office of USCIS, a separate DHS component. We apologize for the error, and request that the Court direct amendment of the caption pursuant to Fed. R. Civ. P. 25(d).

5. Petitioner hereby offers the instant reply. For the reasons that follow, the Government's motion should be denied, and the Petition should be granted.

I. The Government's jurisdictional claims are based on a two-justice concurring opinion in a Supreme Court case where six justices rejected its argument.

Right out of the gate, the Government's argument runs headlong into conflicting Supreme Court precedent. It argues that subsections (g) and (b)(9) of 8 U.S.C. § 1252 bar review of Petitioner's challenge to his detention because any such claim "aris[es] from" the decision to initiate removal proceedings. Dkt. No. 5-1 at 3–7. In *Jennings*, the Supreme Court rejected this "extreme," "expansive," and "absurd" reading of the phrase "arising from":

This provision does not deprive us of jurisdiction. We are required in this case to decide "questions of law," specifically, whether, contrary to the decision of the Court of Appeals, certain statutory provisions require detention without a bond hearing. We assume for the sake of argument that the actions taken with respect to all the aliens in the certified class constitute "action[s] taken . . . to remove [them] from the United States." On that assumption, the applicability of § 1252(b)(9) turns on whether the legal questions that we must decide "aris[e] from" the actions taken to remove these aliens.

It may be argued that this is so in the sense that if those actions had never been taken, the aliens would not be in custody at all. But this expansive interpretation of § 1252(b)(9) would lead to staggering results. Suppose, for example, that a detained alien wishes to assert a claim under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), based on allegedly inhumane conditions of confinement. See, e.g., *Ziglar v. Abbasi*, 582 U.S. 120, 146–149, 137 S.Ct. 1843, 1863–1867, 198 L.Ed.2d 290 (2017). Or suppose that a detained alien brings a state-law claim for assault against a guard or fellow detainee. Or suppose that an alien is injured when a truck hits the bus transporting aliens to a detention facility, and the alien sues the driver or owner of the truck. The "questions of law and fact" in all those cases could be said to "aris[e] from" actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention. But cramming judicial review of those questions into the review of final removal orders would be absurd.

Jennings v. Rodriguez, 583 U.S. 281, 292–93 (2018) (alterations in original).

This operative *Jennings* opinion, which ultimately vacated a Ninth Circuit decision in the detainees' favor, was drafted by Justice Alito. On the jurisdictional question, he was joined by the Chief Justice as well as Justice Kennedy. The dissenters—Justices Breyer, Ginsburg, and Sotomayor—argued that the detainees should have prevailed, necessarily agreeing that jurisdiction lay. And the Government's precise argument *here* received only two votes, from Justices Thomas and Gorsuch.² Indeed, the Government cites their concurrence in its motion. *See* Dkt. No. 7 (quoting *Jennings*, 583 U.S. at 319 (Thomas, J., concurring)). But its argument fails for the simple reason that six is a majority, and two is not.

Petitioner challenges the statutory³ and constitutional validity of his detention. These are precisely the sorts of “questions of law” that six justices agreed in *Jennings* could be reviewed notwithstanding section 1252's jurisdiction-stripping provisions. *Cf. Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 140 (W.D.N.Y. 2025) (“This Court agrees that it lacks jurisdiction to review the government's discretionary decisions to initiate removal proceedings. In other words, this Court does not have the power to second-guess the wisdom of the executive branch's exercise of its discretion. But district ‘[c]ourts can review how [the respondents] exercise their discretion

² Justice Kagan did not participate.

³ As in other recent cases, the Government here relies on an expansive reading of 8 U.S.C. § 1225(b)(2). *See* Dkt. No. 5-1 at 8; *see also, e.g., Alvarez Ortiz v. Freden*, ___ F. Supp. 3d ___, 25 Civ. 960 (LJV), 2025 WL 3085032, at *1 (W.D.N.Y. Nov. 4, 2025) (“Notwithstanding Supreme Court caselaw and decades of practice, DHS now takes the position that anyone who is in the country without having been legally ‘admitted’—regardless of how long they have been here—falls under 8 U.S.C. § 1225(b), which mandates detention. In other words, DHS now says that those who have entered the United States and those who have never entered are one and the same. And this about-face has been approved by the Board of Immigration Appeals (‘BIA’). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025). Following *Hurtado*, numerous district courts—including Judge Meredith A. Vacca of this District—have disagreed with the BIA's reasoning and granted habeas petitions or motions for preliminary relief for noncitizens whom DHS has detained ostensibly under section 1225(b)(2).” (citation and footnote omitted) (citing *Rezende v. Bondi*, Case No. 25 Civ. 6538 (MAV), ECF No. 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No. 25 Civ. 6532 (MAV), ECF No. 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 25 Civ. 6528 (MAV), ECF No. 20 (W.D.N.Y. Oct. 17, 2025))).

because such a claim does not ask why the Secretary chose to execute the removal order but rather whether the way [the respondents] acted accords with the Constitution and the laws of this country.” (quoting *Torres-Jurado v. Biden*, 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023)) (alterations in *Mata Velasquez*)).

II. The “entry fiction” is inapposite because Petitioner was invited to come here pursuant to presidential policy, and moreover does not challenge any aspect of the decision whether to admit or exclude him—no such determination has even been made at this point in time.

As Judge Vilardo of this District cogently and recently explained in *Mata Velasquez*, binding Second Circuit precedent forecloses the Government’s argument that the entry fiction bars review of claims like the one here:

In *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610 (2d Cir. 1958), the Second Circuit held that “[u]nder the special circumstances of the ... Hungarian refugees [at issue in that case], we think their parole may not be revoked without a hearing at which the basis for the discretionary ruling of revocation may be contested on the merits.” *Id.* at 612. There, the petitioner—Gyula Paktorovics—and his family had been “invited here pursuant to the announced foreign policy of the United States as formulated by the President in his directive of December 1, 1956.” *Id.* at 614. Describing the case as “sui generis,” the Second Circuit distinguished it from “other exclusion cases,” such as *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S.Ct. 625, 97 L.Ed. 956 (1953) and *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544, 70 S.Ct. 309, 94 L.Ed. 317 (1950), which held that “[w]hatever the procedure authorized by Congress is, it is due process as far as [a noncitizen] denied entry is concerned.” *Paktorovics*, 260 F.2d at 613-14. The “invit[ation]” by the President made this case different, the court said. *See id.* at 614.

Nearly seventy years later, the government now argues to this Court that because “due process in this case [is] only what is afforded by statute, [the p]etitioner lacks any right to release ... or any justification for his arrest other than the fact that the statute requires it.” Docket Item 42 at 19. Simply put, this Court “cannot agree that such is the law.” *See Paktorovics*, 260 F.2d at 612.

794 F. Supp. 3d at 147 (alterations in original). “[A] non-admitted noncitizen is not precluded from seeking the protections of the Due Process Clause where they are granted limited status in the country by the Government and that status was revoked without notice. Put differently, a noncitizen who is neither admitted nor denied, but who is granted permission to live in the United States, is protected by the Due Process Clause.” *Rojas v. Almodovar*, No. 25 Civ. 7189 (LJL), 2025 WL 3034183, at *6 (S.D.N.Y. Oct. 30, 2025) (collecting cases).

In truth, this case is on all fours with *Mata Velasquez*. There, too, the Government attempted to argue around *Paktorovics* by pointing to the Supreme Court’s more recent decision in *Dep’t of Homeland Sec’y v. Thuraissigiam*, 591 U.S. 103 (2020). But reliance on *Thuraissigiam*—a case whose Suspension Clause analysis hinged almost entirely on the fact that the detainees *were not seeking release*—is unavailing, for reasons that again were ably explained by Judge Vilardo:

The Supreme Court's decision in *Thuraissigiam* does not change the calculus. In *Thuraissigiam*, the noncitizen “did not ask to be released. Instead, he sought entirely different relief: vacatur of his ‘removal order’ and ‘an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal.’” 591 U.S. at 117-18, 140 S.Ct. 1959 (footnote omitted). The Supreme Court rejected the petitioner's claim that he was entitled to constitutional due process in his expedited removal proceeding.

The Court explained that the petitioner's argument “disregard[ed] the reason for our century-old rule regarding the due process rights of [a noncitizen] seeking *initial entry*.” *Id.* at 139, 140 S.Ct. 1959 (emphasis added). “That rule rests on fundamental propositions,” the Court explained: “[T]he power to *admit or exclude* [noncitizens] is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which [noncitizens] to *admit*; and a concomitant of that power is the power to set the procedures to be followed in determining *whether [a noncitizen] should be admitted*.” *Id.* (emphasis added) (internal citations and quotation marks omitted). The Court then explained that under the expedited removal statute, “Congress provided the right to a ‘determin[ation]’ whether [the noncitizen] had ‘a significant possibility’ of ‘establish[ing] eligibility for asylum,’ and he was given that right.” *Id.* at 140, 140 S.Ct. 1959 (citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (v)). “Because the Due Process

Clause provides nothing more,” the Court concluded, “it does not require review of that determination or how it was made.” *Id.*

While *Thuraissigiam* forecloses the argument that Mata Velasquez 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. *See Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023) (rejecting argument that court should “extract from *Thuraissigiam* a broad rule that any inadmissible noncitizen possesses only those due process rights afforded to them by statute, regardless of the nature of their status or the relief they seek” as “such a conclusion is untethered to the claim in *Thuraissigiam* and the Court’s reasoning”). And the respondents “present no cogent reason why the Court should extend this limited holding to any noncitizen within the immigration process regardless of the legal challenge presented.” *Id.* at 1172.

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. 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*.

794 F. Supp. 3d at 150–52 (alterations and emphasis in original, footnotes omitted). In sum, the Government’s motion to dismiss for failure to state a claim cannot succeed, for all of the reasons that its identical arguments didn’t carry the day in *Mata Velasquez*.

Conclusion

The Government has been given ample opportunity to respond to the Petition. Its sole response has come in the form of a motion to dismiss. And that motion is easily dispensed with as contrary to Second Circuit and Supreme Court precedent. Because the Government does not otherwise oppose the Petition, and for all of the reasons given by Judge Vilardo in the analogous *Mata Velasquez* case, Petitioner “must be released.” *Id.* at 154.

Respectfully submitted,

/s/ Reuben S. Kerben
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Kew Gardens, New York