UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HILDA CECILIA VILLEGAS ex rel. LISUAL ARMANDO GUZMAN ANDUJAR,

Petitioner,

v.

LaDEON FRANCIS,
in his official capacity as Acting Field Office Director of New York Immigration and Customs Enforcement, et al.,

Respondents.

Civil Action No. 1:25-cv-09199-JLR

Reply

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner Lisual Armando Guzman Andujar appeared on November 4, 2025, for a routine immigration court hearing. The judge scheduled him for his next hearing on March 24, 2026. Despite this normal case progression, U.S. Department of Homeland Security agents detained Mr. Guzman Andujar. They did so not upon an assessment that Mr. Guzman Andujar posed a danger or flight risk—the only two bases that justify civil immigration detention—but upon a decades-upending re-interpretation of the immigration detention statutes. Respondents' new interpretation is wrong. And because they did not make a pre-detention assessment that Mr. Guzman Andujar's re-detention was warranted or afford him any process to contest re-detention, Mr. Guzman Andujar merits release from Respondents' custody.

ARGUMENT

I. MR. GUZMAN ANDUJAR IS DUE ADDITIONAL PROCESS UNDER 8 U.S.C. § 1226(A).

A. Mr. Guzman Andujar is Detained Under 8 U.S.C. § 1226(a).

Respondents assert that Mr. Guzman Andujar is detained under 8 U.S.C. § 1225(b)(2)(A). *See* ECF No. 13 ("Resp'ts' Opp'n") at 14.[1] Their reading of the immigration detention statutes defies statutory text and Supreme Court guidance, and contradicts their previous interactions with Mr. Guzman Andujar. Their new interpretation has been soundly rejected by judges around the country, including within this Circuit. *See, e.g.*, *Alvarez Ortiz v. Freden*, --- F. Supp. 3d ---, 2025 WL 3085032, at *4-10 (W.D.N.Y. Nov. 4, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at 8-12 (E.D.N.Y. Oct. 6, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *2-9 (S.D.N.Y. Aug. 13, 2025).[2]

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[1] ECF-labeled pagination is cited throughout this brief.

[2] *See also, e.g.*, *S. v. Chestnut*, No. 25-cv-1427, 2025 WL 3167826, at *4-8 (E.D. Cal. Nov. 12, 2025); *Garcia v. Noem*, No. 25-cv-1712, 2025 WL 3111223, at *2-3 (E.D. Va. Nov. 6, 2025);

Section 1225(b)(2)(A) mandates the detention of an "applicant for admission, if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." The statute's plain text addresses only an immigration official's initial interaction with the noncitizen. Section 1225(b)(2)(A)'s use of "seeking admission" is determinative. "Admission" is defined by the Immigration and Nationality Act as the "lawful entry" of a noncitizen "after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "seeking"—which is not defined in the INA—"means asking for or trying to acquire or gain." *Alvarez Ortiz*, 2025 WL 3085032, at *6 (citing Merriam-Webster Dictionary, *Seeking*, https://www.merriam-webster.com/dictionary/seeking) (cleaned up). The conjunctive meaning of "seeking admission" is thus the act of "asking for or trying to acquire or gain" "lawful entry" into the United States. Merriam-Webster Dictionary, *Seeking*; 8 U.S.C. § 1101(a)(13)(A). The use of the present participle, "seeking," "necessarily implies some sort of present-tense action." *Alvarez Ortiz*, 2025 WL 3085032, at *6 (internal citation omitted).

Section 1225(b)(2)(A)'s present-facing inquiry is supported by the rule against surplusage. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (courts should "give effect, if possible, to every clause and word of a statute") (internal citation omitted). The statute's inclusion of both "applicant[s] for admission" and "seeking admission" means that the two phrases are not one and the same. 8 U.S.C. § 1225(b)(2)(A). If applicants for admission are perpetually seeking admission, "then the words 'seeking admission' would be surplusage," *Alvarez Ortiz*, 2025 WL

Aguirre Villa v. Normand, No. 25-cv-89, 2025 WL 3095969, at *4-10 (S.D. Ga. Nov. 4, 2025); *Ventura Martinez v. Trump*, No. 25-cv-1445, 2025 WL 3124847, at *2 (W.D. La. Oct. 22, 2025); *Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *16-18 (W.D. Wash. Sept. 30, 2025); *Beltran Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2-5 (W.D. Ky. Sept. 19, 2025); *Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ---, 2025 WL 2639390, at *7-10 (D.N.H. Sept. 9, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411, at *10-13 (D. Minn. Aug. 15, 2025).

3085032, at *7. While Mr. Guzman Andujar, who entered the country on January 27, 2023, without completing a "lawful entry . . . after inspection and authorization," 8 U.S.C. § 1101(a)(13)(A), might still be an "applicant for admission," he was not "seeking admission" when the government arrested and detained him more than two years later, on November 4, 2025, ECF No. 12-1 at 4; 8 U.S.C. § 1225(b)(2)(A).

By contrast, Section 1226(a) is directly applicable to Mr. Guzman Andujar. It authorizes DHS's detention of noncitizens "pending a decision on whether . . . [they are] to be removed from the United States." Because Mr. Guzman Andujar's removal proceedings are ongoing, he plainly falls within Section 1226(a)'s ambit. *See* ECF No. 12-1 at 4.

The Supreme Court's discussion of Sections 1225(b) and 1226(a) in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), is instructive. The Court explained that Section 1225 applies to "certain [noncitizens] seeking admission into the country," *id.* at 289, while Section 1226 is the "default rule" that "applies to [noncitizens] already present in the United States," *id.* at 303. For someone like Mr. Guzman Andujar who is "already in the country," *id.* at 289, and "has been residing in this country for more than two years," *Lopez Benitez*, 2025 WL 2371588, at *9, Section 1226(a) applies.

DHS's past interactions with Mr. Guzman Andujar further confirm that he is detained under Section 1226(a). When DHS first encountered Mr. Guzman Andujar in January 2023, it issued him an administrative arrest warrant, stating he is "liable to being taken into custody as authorized by [Section 1226]." ECF No. 12-2 at 5. DHS then made an initial custody determination, releasing Mr. Guzman Andujar "[p]ursuant to the authority contained in [Section 1226]." *Id.* at 6. Its corresponding Order of Release on Recognizance indicated release was being made "[i]n accordance with [Section 1226]." *Id.* at 4. And DHS repeated this determination in

the Notice to Appear it filed with the Executive Office of Immigration Review. The Department checked off the box conveying that Mr. Guzman Andujar is a noncitizen "present in the United States who has not been admitted or paroled" and not the box designating him "an arriving [noncitizen]." *Id.* at 1. DHS's use of the second box denoted its understanding that Mr. Guzman Andujar was subject to Section 1226. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 218-19 (D. Mass. 2025) (discussing Notice to Appear boxes and their connection with Sections 1225 and 1226).

B. Mr. Guzman Andujar Should Be Excused from the Exhaustion Requirements.

Respondents next contend that if Mr. Guzman Andujar is detained under Section 1226(a), he needs to exhaust administrative remedies before this Court may act. *See* Resp'ts' Opp'n at 24-25. But Respondents' contention is self-contradictory. Their assertion that Mr. Guzman Andujar should ask EOIR for a custody hearing conflicts with their simultaneous acknowledgment that EOIR would categorically deny such a request. *See Matter of Yajure Hurtado*, 26 I. & N. Dec. 216, 220 (B.I.A. 2025) (holding that immigration judges do not have authority to hold custody hearings for "[noncitizens] who are present in the United States without admission"); *see also* Resp'ts' Opp'n. at 16.

Respondents attempt to get around this problem by indicating that this Court can first issue a "ruling . . . that Petitioner [i]s detained under Section 1226(a)" before Mr. Guzman Andujar "request[s] and receive[s] the bond hearing." Resp'ts' Opp'n at 25 n.7. But that is not how exhaustion works. Exhaustion is a threshold requirement that dictates whether this Court can act at all on Mr. Guzman Andujar's habeas claim. *See Lopez Benitez*, 2025 WL 2371588, at *13 ("Courts generally require administrative exhaustion before immigration detention may be challenged in federal courts by a writ of habeas corpus.") (internal citation omitted). And this Court does not have a standalone basis for declaring which statute authorizes Mr. Guzman

Andujar's detention. *Cf. Godfrey v. Ball*, No. 23-7104, 2024 WL 4471571, at *2 n.2 (2d Cir. Oct. 11, 2024) (mooting a habeas petition when the only remaining question was whether the petitioner was detained under 8 U.S.C. § 1226 or 1231, but not whether the detention itself was unlawful).

Moreover, Mr. Guzman Andujar merits excusal of exhaustion. Exhaustion in the immigration habeas context is non-mandatory and courts "excuse exhaustion" in instances "including when '(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) . . . a p[etitioner] has raised a substantial constitutional question.'" *Lopez Benitez*, 2025 WL 2371588, at *13 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003)).

Mr. Guzman Andujar should first be excused from exhaustion because the agency's available remedies provide no genuine opportunity for adequate relief. A request for a custody hearing to EOIR is inadequate because EOIR would find that it lacks jurisdiction to order release. *See Matter of Yajure Hurtado*, 26 I. & N. Dec. at 220. It would also be futile. *See, e.g.*, *Alvarez Ortiz*, 2025 WL 3085032, at *5 (an initial request for a custody hearing would be futile "because immigration judges are bound to follow *Hurtado* absent an order from th[e] [c]ourt"); *Guerrero Orellana v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2809996, at *4 n.2 (D. Mass. Oct. 3, 2025) ("The [Board of Immigration Appeals] made its position on the scope of § 1225(b)(2)(A) crystal clear in *Matter of Hurtado* such that further agency proceedings would be futile.") (internal citation omitted).

And a Section 1226(a)-prescribed custody hearing is inadequate because Mr. Guzman Andujar's petition does not challenge DHS's initial detention decision, but rather its recent *re*-detention decision. *See* ECF No. 12-2 at 6 (DHS making an initial custody determination on

January 27, 2023). The Department's January 2023 release of Mr. Guzman Andujar from custody was ostensibly premised upon its determination that Mr. Guzman Andujar did not pose a sufficient danger or flight risk. DHS's re-detention of Mr. Guzman Andujar falls outside the Section 1226(a) scheme because hearings provided through Section 1226(a)'s "implementing regulations provide" are "custody *re*-determination" hearings that examine DHS's "initial decision to detain." *Lopez Benitez*, 2025 WL 2371588, at *13 (internal citation omitted) (emphasis in original). Because Mr. Guzman Andujar's petition challenges his re-detention, "there is no . . . decision" for him to "appeal" and a Section 1226(a) custody hearing "is no substitute for the requirement that [DHS] engage in a deliberative process prior to" his re-detention. *Id.* (internal citation omitted).

Mr. Guzman Andujar should lastly be excused from exhaustion because his petition "raises a substantial constitutional question." *Id.* at *14. Like in *Lopez Benitez*, Mr. Guzman Andujar's claim for due process flows out of the Department's failure to first conduct "an individualized assessment" of his risks prior to re-detention. *Id.* EOIR, which generally "does not have jurisdiction to adjudicate constitutional issues," *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002), is not "positioned properly to adjudicate [his] claim," *Lopez Benitez*, 2025 WL 2371588, at *14.

C. Release is Appropriate.

Given the impropriety of DHS's re-detention of Mr. Guzman Andujar, release is the appropriate, due-process-compelled habeas remedy. *See, e.g., id.* at *15. The *Mathews* test confirms this result. *See id.*, at *9 ("In the Second Circuit, the *Mathews* . . . test applies when determining the adequacy of process" in the civil immigration confinement context) (internal citation omitted).

First, "the private interest that will be affected by the official action," *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), is at the zenith because Mr. Guzman Andujar's "[f]reedom from

[unwarranted] imprisonment . . . lies at the heart of the liberty [the Due Process] Clause protects," *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020) (the private interest is "the most significant liberty interest there is—the interest in being free from imprisonment") (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

Second, "the risk of an erroneous deprivation . . . through [DHS's] procedures," *Mathews*, 424 U.S. at 335, is "particularly high," *Lopez Benitez*, 2025 WL 2371588, at *12. The Department's re-detention of Mr. Guzman Andujar without any individualized assessment that he poses a danger or flight risk sharply elevates the risk of erroneous deprivation. *See Zadvydas*, 533 U.S. at 690 ("[P]reventing flight" and "protecting the community" are the only two permissible interests for immigration detention). When DHS first released Mr. Guzman Andujar under Section 1226(a), *see* ECF No. 12-2 at 4, 6, "it could not have done so validly unless it did not consider him to be a flight risk or danger to the community at that time," *Lopez Benitez*, 2025 WL 2371588, at *12. Yet when it re-detained him, its determination was solely predicated upon "the pendency of [Mr. Guzman Andujar's] ongoing removal proceedings." ECF No. 12-1 at 1. That DHS "failed to articulate any change in circumstances between the time of [Mr. Guzman Andujar's] initial release in 2023 and his re-detention in 2025" demonstrates the deficiencies of its procedures. *Lopez Benitez*, 2025 WL 2371588, at *12 (cleaned up and modified).

Third, "the Government's interest," *Mathews*, 424 U.S. at 335, cannot lie in detaining someone, like Mr. Guzman Andujar, that Respondents cannot show to be a danger or flight risk, *see, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *12. Because DHS premised its re-detention decision only on Mr. Guzman Andujar's "ongoing removal proceedings," ECF No. 12-1 at 1, its actions were contrary to law, *see Zadvydas*, 533 U.S. at 690 (permitting DHS detention only for "preventing flight" or "protecting the community"); *cf. Cao He Lin v. U.S. Dep't of Justice*, 428

F.3d 391, 400 (2d Cir. 2005) (federal courts review agency actions only on the reasons the agency articulates) (citing *S.E.C. v. Chenery*, 318 U.S. 80, 88 (1943)).

Because "[i]n our society liberty is the norm, and detention . . . is the carefully limited exception," *United States v. Salerno*, 481 U.S. 739, 755 (1987), DHS's unjustified re-detention of Mr. Guzman Andujar warrants this Court's intervention. The Department's treatment of "attendance in immigration court as a game of detention roulette is not consistent with the constitutional guarantee of due process." *Lopez Benitez*, 2025 WL 2371588, at *15. And Respondents' position that "government agents may sweep up [Mr. Guzman Andujar or] any person they wish, for no reason whatsoever so long as [he] will, at some unknown point in time, be allowed to ask some other official for his . . . release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.* (internal citation omitted) (cleaned up and modified).

D. Alternatively, a Custody Hearing at Which Respondents Bear the Burden of Proof is Warranted.

If this Court disagrees that release is the appropriate remedy, it should order Respondents to provide Mr. Guzman Andujar with a custody hearing before a neutral arbiter at which Respondents must clearly and convincingly prove that his continued detention is justified. This allocation of burdens is warranted given the gravity of the liberty deprivation involved. *See Velasco Lopez*, 978 F.3d at 856 ("We believe that it is improper to allocate the risk of error evenly between the individual and the Government when the potential injury is as significant as the individual's liberty. Accordingly, we conclude that a clear and convincing standard of proof provides the appropriate level of procedural protection.").

Placing a clear and convincing burden of proof on Respondents is consistent with longstanding Supreme Court guidance in various civil detention settings. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 75-76 (1992); *Salerno*, 481 U.S. at 751; *Addington v. Texas*, 441 U.S. 418,

426 (1979). Any lesser standard "creates the risk of increasing the number of individuals erroneously committed" and "it is at least unclear to what extent, if any, the state's interests are furthered by using [it]." *Addington*, 441 U.S. at 426; *see also Velasco Lopez*, 978 F.3d at 854 ("[S]hifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.").

And it is supported by the *Mathews* test. *See* 424 U.S. at 335. The first factor continues to involve "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 852. The second factor—risk of erroneous deprivation—is mitigated by placing the burden on Respondents. Because DHS first released Mr. Guzman Andujar from custody in 2023 and decided to re-detain him in 2025, it is in the best position to supply evidence of Mr. Guzman Andujar's changed risks. The procedures currently used for 8 U.S.C. § 1226(a) custody hearings, which place the burden of proof on a noncitizen to prove that they are not a danger or flight risk, are inadequate. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006) (requiring noncitizens "to show to the satisfaction of the Immigration Judge that he or she merits release on bond"). Mr. Guzman Andujar is in no position to demonstrate what, if anything, has changed in DHS's decision-making between 2023 and 2025. The risk of an erroneous deprivation of Mr. Guzman Andujar's private interest is high and the safeguard of placing the burden on Respondents adequately guards against that risk.

And third, Respondents' interest, "including . . . the fiscal and administrative burdens that . . . would entail," *Mathews*, 424 U.S. at 335, is minimal. DHS is best positioned to supply evidence to satisfy a clear and convincing burden that Mr. Guzman Andujar poses a significant enough danger or flight risk to justify detention. Such records are readily available to Respondents,

and inexpensive to procure. *See, e.g., Velasco Lopez*, 978 F.3d at 855 ("DHS can access the records of other federal agencies and local law enforcement and routinely do so for purposes of [removal] proceedings.").

Any evaluation of Mr. Guzman Andujar's risks—were they to exist—should include proof that no amount of bond or conditions of release would secure his compliance with future immigration orders. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 158 (2d Cir. 2024) (finding that *Mathews* calls for consideration of alternatives to detention and ability to pay at a custody hearing); *Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, 800 (W.D.N.Y. 2019) ("[B]oth due process and BIA precedent require the IJ to consider ability to pay and alternative conditions of release.").

II. EVEN IF MR. GUZMAN ANDUJAR IS DETAINED UNDER 8 U.S.C. § 1225(B)(2)(A), HE IS DUE ADDITIONAL PROCESS.

Mr. Guzman Andujar is due additional process even if he is detained under 8 U.S.C. § 1225(b)(2)(A) because he has a protected liberty interest against his re-detention absent any change in circumstances. Respondents once released Mr. Guzman Andujar on his own recognizance pursuant to 8 U.S.C. § 1226(a). *See* ECF No. 12-2 at 4. Mr. Guzman Andujar's prior release "created a reasonable expectation that he would be entitled to retain his liberty so long as he was not a flight risk or danger." *S.*, 2025 WL 3167826, at *8. Even if Section 1225(b)(2)(A) applies to Mr. Guzman Andujar now, he maintains "a protected liberty interest based on the government's prior representation to him that his release was pursuant to section 1226, combined with the [more than two years] he spent at liberty while relying on that representation." *Id.*

Respondents rely, *inter alia*, on *D.H.S. v. Thuraissigiam*, 591 U.S. 103 (2020), and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), to assert that if Mr. Guzman Andujar is detained under Section 1225(b)(2)(A), he is due no process at all. *See* Resp'ts' Opp'n

at 16-23. But none of Respondents' cases concerned a challenge, like Mr. Guzman Andujar's, against DHS's re-detention of a noncitizen that it once released pursuant to Section 1226. And they generally involved noncitizens claiming entitlement to some process in regard to their "attempt[] to enter the United States." *S.*, 2025 WL 3167826, at *8; *see also Thuraissigiam*, 591 U.S. at 140 (a noncitizen attempting to enter the country "has only those rights *regarding admission* that Congress has provided by statute") (emphasis added); *Mezei*, 345 U.S. at 212 (noncitizens "on the threshold of initial entry" have only "the procedure authorized by Congress," but noncitizens "who have once passed through our gates, even illegally," are entitled "to traditional standards of fairness encompassed in due process of law") (cleaned up). Because Mr. Guzman Andujar's access to process is fundamentally different from individuals on the threshold of entry and his 2023 release created a protected interest, he merits the above-discussed remedies even if he is detained under Section 1225(b)(2)(A). *See Zadvydas*, 533 U.S. at 693 ("[O]nce a[] [noncitizen] enters the country, the legal circumstances change, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

CONCLUSION

Mr. Guzman Andujar respectfully requests this Court grant his petition and order Respondents to release him from their custody.

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Respectfully submitted,

Dated: November 14, 2025
Washington, D.C.

/s/ John H. Peng

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Petitioner's Reply to Respondents' Memorandum of Law in Opposition to the Petition for a Writ of Habeas Corpus complies with this Court's type-volume rule because it contains 3,496 words, which is fewer than the 3,500 words permitted for a memorandum of law in reply.

//

Dated: November 14, 2025
Washington, D.C.

/s/ John H. Peng
John H. Peng

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Petitioner's Reply to Respondents' Memorandum of Law in Opposition to the Petition for a Writ of Habeas Corpus on November 14, 2025, via this Court's CM/ECF system and service will be completed on counsel for Respondents via the CM/ECF system.

//

Dated: November 14, 2025
Washington, D.C.

/s/ John H. Peng
John H. Peng