

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Enbin Sun,

Petitioner,

v.

JUDITH ALMODOVAR, *in her official capacity as Field Office Director of Enforcement and Removal Operations, New York City, Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as Secretary of the U.S. Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 1:25-cv-9262 (PKC)

**PETITIONER'S OPPOSITION TO
RESPONDENTS' MEMORANDUM
OF LAW**

Petitioner respectfully submits this Reply Memorandum of Law in further support of his Petition for a Writ of Habeas Corpus, and in response to Respondents' Memorandum of Law in Opposition.

PRELIMINARY STATEMENT

Petitioner, a Chinese National fleeing persecution, entered the United States on or near Mission, Texas on or about January 27, 2023. He was encountered by DHS-ICE, who issued Form I-200 Warrant for Arrest of an Alien, under the authority of 8 U.S.C. § 1226. *See* Exhibit 11-2 of Respondents' Return. Petitioner was then released under his own recognizance under the same statutory authority. *See* Exhibit 11-3 of Respondents' Return.

For nearly three years, Petitioner complied with all requirements of DHS-ICE and the Executive Office of Immigration Review, attending all of his hearings while lawfully pursuing his application for asylum. *See* Exhibits A-D of Petition for Writ of Habeas Corpus, ECF No. 1. On November 5, 2025, while complying with a request to report by DHS-ICE, Petitioner was re-arrested and detained without any notice, explanation, or due process, including any individualized assessment of his flight risk or danger to the community. At that time, DHS-ICE issued a warrant citing the authority found in 8 U.S.C. § 1226. *See* Exhibit 11-4 of Respondents' Return. Petitioner submitted this Petition for Writ of Habeas Corpus on November 5, 2025, and on November 14, 2025, Respondents submitted their Opposition and Return to this petition.

Respondents' opposition fails for a simple reason: 8 U.S.C. § 1225(b)(2)(A), the statute cited for Petitioner's detention, does not apply to him. Instead, administrative record establishes that Petitioner has always been treated as if 8 U.S.C. § 1226 was applicable. Yet now, for the first time in litigation, Respondents claim that Petitioner is a mandatory detainee under 8 U.S.C. § 1225(b), despite his previous release under his own recognizance. This attempt to reclassify

Petitioner, nearly three years after his release, as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is legally impermissible. Respondents cannot resurrect this authority years after granting release under a different statute. Nor may it toggle between statutory schemes based on administrative convenience, resource constraints, or litigation strategy.

Even without reaching Respondents' shifting interpretation of statutory authority, their re-detention of Petitioner does not comport with due process. His re-detention was carried out without any individualized assessment of flight risk or danger to the community, notice, or valid statutory basis, and therefore his custody status is ultra vires and unconstitutional.

While not controlling here, multiple Judges in this district have reached similar holdings regarding the applicability of 8 U.S.C. § 1226, and/or the violation of due process for individuals in circumstances like Petitioner's. See *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Kelly v. Aldmodovar*, 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025); *Samb v. Joyce*, No. 25 CIV. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); and *Acevedo v. Almodovar* No. 1:25-cv-7189 (S.D.N.Y. October 30, 2025). Petitioner contends a similar remedy – his immediate release from unlawful detention – would be appropriate here given this ongoing violation of due process, and the unreasonableness of the government's statutory interpretation.

ARGUMENT

I. Subject-Matter Jurisdiction

In its November 12, 2025 Order, the Court indicated that its subject matter jurisdiction was “non-waivable.” See Memo Endorsement, ECF No. 8. Parties were further instructed to “address

the implications of the petitioner's transfer on the Court's subject matter jurisdiction in your submission." *Id.*

Here, Petitioner agrees with Respondents' position on this issue, as articulated in their opposition. *See* Respondents' Memorandum of Law in Opposition, ECF No. 9. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's detention. Under *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004), habeas jurisdiction lies in the district where the petitioner is detained at the time of filing. When this petition was filed, Petitioner was detained at 26 Federal Plaza in Manhattan, placing custody squarely within this District. Irrespective of his subsequent transfer, this Court retains jurisdiction over his petition.

II. Petitioner Is Detained Under 8 U.S.C. § 1226, Not 8 U.S.C. § 1225(b)(2)(A)

8 U.S.C. § 1225(b)(2)(A) applies to individuals who are "seeking admission" at the time of inspection at or near the border. *See* *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("§ 1225(b) governs individuals at the Nation's borders and ports of entry, where admissibility must be determined"). By contrast, 8 U.S.C. § 1226(a) applies to all noncitizens arrested and detained pending a decision on removal. Here, Petitioner entered in January 2023, lived and worked in New York City for three years while lawfully pursuing his application for asylum, and was arrested by DHS-ICE while reporting to them 26 Federal Plaza, New York, NY on November 5, 2025.

Respondents argue that 8 U.S.C. § 1225(b)(2)(A) is controlling, attempting to justify Petitioner's mandatory detention by invoking a statutory framework that does not apply to him. Respondents' own administrative record indicates that from his arrival in the United States, he has been treated as if 8 U.S.C. § 1226 applied. But Respondents long ago relinquished the authority to classify Petitioner in that manner. After his arrival in the U.S., he was physically released into the

interior, lived openly in New York for nearly three years, complied with all ICE supervision, secured employment, and was treated as a non-detained under 8 U.S.C. § 1226(a). Under binding statutory structure and consistent with nearly every case addressing this issue, an individual whom DHS has admitted into the country for purposes of removal proceedings, supervised under § 1226, and integrated into the community cannot be retroactively transformed into the “functional equivalent” of an applicant stopped at the threshold. As argued above, and mentioned in Respondents’ memorandum, this argument has been accepted by multiple courts in both this district and across the country.

Respondents assert that that Petitioner was only released on January 28, 2023, “as there was no viable nearby detention facility able to accommodate him,” implying that the release was a mere logistical necessity and not a legal custody determination. *See* So. Declaration, ECF No. 10. This argument is not only unsupported by the record, but it also contradicts the Government’s position that Petitioner was always subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has been crystal clear: if detention is truly mandatory under § 1225(b), DHS has no authority to release the individual except through the narrow parole authority under § 1182(d)(5)(A). *See* *Jennings v. Rodriguez*, 583 U.S. 281, (2018) (mandatory detention under § 1225(b)(1) and (b)(2) is categorical). If Petitioner were truly a 8 U.S.C. § 1225(b)(2)(A) mandatory detainee, DHS had no legal ability to release him because “there was no bed space.” The Government cannot simultaneously argue: “His detention was mandatory,” Agency action must be based on legally valid grounds, not post-hoc rationalizations.

This matter is distinguished from other cases cited by Respondents. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) involved an individual who was placed into expedited removal proceedings and was found not to have a credible fear of persecution. *Shaughnessy v.*

United States ex rel. Mezei, 345 U.S. 206, 212 (1953) involved an individual ordered excluded from the United States at a port of entry. Here, the record demonstrates that Petitioner was arrested and released under 8 U.S.C. § 1226, rather than placed into expedited removal proceedings, or removed when attempting to enter the United States at a port of entry.

Respondents' mandatory detention scheme relies on logic recently delineated by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025), a case that upended nearly 30 years of statutory and regulatory jurisprudence. Following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court is not required to give this flawed interpretation any deference. This is especially so, given the lack of consistency inherent to the Board's current interpretation of the relevant statutory and regulatory scheme relating to the detention of non-citizens. *Id.* at 385-386.

The reasoning in *Hurtado* is also inconsistent with Congressional intent. As recently as January 2025, the Laken Riley Act was enacted. This law amended the mandatory detention provision of INA § 236(c) to apply to aliens who are inadmissible under INA § 212(a)(6)(A), and were arrested for, convicted of, or committed a class of crimes related to theft or injury.¹ If the intention of Congress was for aliens charged under INA § 212(a)(6)(A) to be detained under INA § 235, then amending the provisions of INA § 236(c) in this manner would have been unnecessary. Likewise, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies. Rodriguez Vazquez vs Bostock, 2025

¹ As indicated on Petitioner's Notice to Appear, he was charged with inadmissibility under INA § 212(a)(6)(A). See Exhibit 11-1 of Respondents' Return.

WL1193850, at *12 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

Under the statutory authority, relevant case law, and the administrative record in this matter, 8 U.S.C. § 1226 is the appropriate statute authorizing Petitioner's detention. Based on this, he does not fall into any of the categories mandating detention under the INA.

III. Petitioner's Re-Detention Violates Due Process

In *Zadvydas v. Davis*, the Supreme Court reiterated the long-standing concept that due process extends to non-citizens, irrespective of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693. Under the balancing test found in *Matthews v. Eldridge*, which the Second Circuit applies to determine process in civil immigration confinement, the court must balance,

“(1) the private interest that will be affected by the official action; (2) the value, if any, of additional or substitute procedural safeguards; and (3) the interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

Here, all three of the factors fall in favor of Petitioner. First, Petitioner's private interest affected by the government in this matter is his very liberty, perhaps the ultimate private interest. Second, in their decision to re-detain him, Respondents offered zero additional or substitute procedural safeguards. Following his January 2023 release under his own recognizance, no individualized assessment of his danger to the community or flight risk was made by Respondents, and no change in circumstances justified detention. He has been living here in the United States for nearly three years, dutifully attending all court hearings, ICE reporting, and pursuing his application for asylum without issue. Third, while the government has a strong interest in enforcing this country's

immigration laws, this interest does not obviate the need for *any process*. Nor would it be a burden for them to afford Petitioner a minimal level of process in their decision to re-detain him. This is especially cogent given Respondents have failed to follow their own laws and regulations.

Petitioner's re-detention under these circumstances—whether Respondents label it 8 U.S.C. § 1225 or 8 U.S.C. § 1226—is precisely the sort of arbitrary, process-less deprivation of liberty that the Due Process Clause forbids. Respondents argue that if the Court finds that 8 U.S.C. § 1226, the Court should require Petitioner to exhaust his administrative remedies through a bond hearing. This position is untenable. Post-deprivation immigration-court review cannot possibly remedy DHS's failure to perform the required individualized custody assessment. The Constitution demands that the government exercise discretion *before* depriving a person of liberty, and the regulations do not authorize immigration judges to manufacture an initial custody determination where DHS made none. DHS-ICE has conducted no individualized assessment whatsoever, and the BIA's recent decision in *Hurtado* demonstrates that a bond hearing is not feasible. Seeking administrative exhaustion is no adequate remedy here. Due process requires that the only adequate remedy is Petitioner's release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner reiterates its request that the Court grant the following relief:

1. Grant the Petition for a Writ of Habeas Corpus and order Petitioner's immediate release;
2. Maintain the Court's order prohibiting Petitioner's transfer during the pendency of this matter; and,
3. Grant such other and further relief as the Court deems just and proper.

Dated: November 18, 2025,

LAW OFFICE OF NG & WASSERMAN PLLC

/s/ Jed S. Wasserman

By: Jed Wasserman
LAW OFFICE OF NG&WASSERMAN PLLC
27 East Broadway, 2nd Floor
New York, NY 10002
Telephone: (212) 925-5616
jedwasserman@ngwasserman.com