

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Jose Javier Cuy Comes,

Petitioner,

v.

Francis Deleon, *et al.*,

Respondents.

Case No. 1:25-cv-09283-AT

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

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INTRODUCTION

Petitioner Jose Cuy Comes challenges his unlawful detention on a Queens sidewalk by masked agents who identified themselves as “police.” In their response, Respondents do not claim that Mr. Cuy Comes’s detention was individualized nor that they conducted any inquiry as to whether he posed a flight risk or danger. Instead, as they have in hundreds of other cases here and around the country, Respondents contend that Mr. Cuy Comes is subject to *mandatory* detention under a capacious new interpretation of decades-old statutes that, until a few months ago, they had never applied to someone like petitioner. As a result, they claim, he has no right to due process.

Respondents’ interpretation of their statutory authority is both novel and wrong. Mr. Cuy Comes is not subject to mandatory detention. And as a longtime resident of the U.S., he was entitled to due process when detained—regardless of whether his status here is lawful or unlawful. The appropriate remedy for Respondents’ egregious violation of his constitutional and statutory rights is release. A bond hearing would only prolong his unlawful custody. And as a means to revisit ICE’s initial custody determination, when no such determination took place here, its use is neither appropriate nor a conservation of judicial resources—since as Respondents concede, no bond hearing would be available absent an order from this Court. Resp. Memo. (ECF No. 11) at n. 13.

Accordingly, Mr. Cuy Comes asks the Court to order his immediate release.

FACTUAL BACKGROUND

Mr. Cuy Comes is a Queens resident who has resided in the U.S. for over five years.¹ On November 4, 2025, he was leaving home for work at approximately 6 a.m. when officers who by

¹A paragraph in Mr. Cuy Comes’s petition erroneously refers to him as having resided in the U.S. for 20 years. With apologies to the Court, he only intended to assert over 5 years of presence. The mistake has no bearing on the legal issues in this case.

their own admission identified themselves as “police” stopped him on the sidewalk outside his home. *See* I213 (ECF No. 10-1) at 2. These police were in fact ICE officers who purport to have been looking for Mr. Cuy Comes’s much younger neighbor. *See Chalco–Beltran v. Francis et al*, 1:25-cv-09208-PAE (S.D.N.Y. filed Nov. 4, 2025) (challenging detention of neighbor referenced in the I213 filed in Mr. Cuy Comes’s case). Although Respondents claim Mr. Cuy Comes matched the description of his neighbor, their own documentation makes evident that they also detained other people—all Hispanic—as part of their raid that morning. Among these were Mr. Cuy Comes’s other neighbor who is legally blind and who has also challenged the unlawful and race-based underpinnings of his stop. *See* I213 (ECF No. 10-1) at 3 (including “medical information” for Carlos Chalco Chango in an I213 form ostensibly prepared for Mr. Cuy Comes²); *Chalco Chango v. Francis et al*, 1:25-cv-09205-ALC (S.D.N.Y. filed Nov. 4, 2025). Respondents have claimed that after ascertaining Mr. Cuy Comes was not the neighbor whom they were seeking, they nonetheless “engaged in a consensual conversation.” *See* I213 (ECF No. 10-1) at 2. The admitted presence of numerous officers from several different law-enforcement agencies, wearing vests and identifying as “police,” obviously casts doubt on whether this interaction was consensual or voluntary. *See also* Pet’n (ECF No. 1) at ¶ 14 (alleging at least six officers were present). In his verified petition, Mr. Cuy Comes alleged that he was “stopped” by agents and that they demanded he show them his phone which he refused to do. Pet’n at ¶ 14.

Mr. Cuy Comes’s detention was pursuant to an administrative warrant that lists the statutory authority for his detention as Section 236 of the INA. I200 (ECF No. 10-2) at 1. He remains in custody at Delaney Hall in Newark, New Jersey.

² Respondents have filed an I-213 that they appear to have recycled or intermixed with a document from Mr. Chalco Chango’s arrest, since it refers to him several times.

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention.

As this Court has recognized, Respondents are wrong about the statutory authority for Mr. Cuy Comes detention. *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *4 (S.D.N.Y. Oct. 19, 2025). Indeed, with now two exceptions both cited by Respondents, Resp. Memo. (ECF No. 11) at n. 5, “[e]very district court to address this question has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.” *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025).

This Court should again reject Respondents’ atextual statutory interpretation and hold that Section 1226 still governs Petitioner’s detention. *Id.* at n. 3 (collecting cases); *see also Tumba Huamami v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014, at *4 (S.D.N.Y. Nov. 4, 2025); *Lopez Benitez v. Francis*, --- F.Supp.3d ---, 2025 WL 2371588 at *9-12 (S.D.N.Y. August 13, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

By its own terms, Section 1225(b)(2) does not apply here. In interpreting statutes, courts must ensure “no clause, sentence, or word shall be superfluous, void, or insignificant.” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). While Respondents stress that Mr. Cuy Comes is an “applicant for admission,” they ignore Section 1225(b)(2)’s qualifier that such individuals also “are *seeking* admission”—language that “necessarily implies some sort of present-tense action.” *Martinez v.*

Hyde, 2025 WL 2084238, at *6. When Respondents arrested Mr. Cuy Comes, he had resided in the U.S. for over five years. He was not at the border and he was not seeking admission. *See Gonzalez*, 2025 WL 2961626, at *4 (“because Gonzalez has already lived in the United States for over two years since his release, § 1225 no longer applies to him”).

Respondents’ substitution of Section 1225(b)(2) for Section 1226 also reads other words out of the statute. Section 1226(a) governs detention pursuant to a warrant, which is what happened here. *See* I200 (ECF No. 10-2). Its repeated use of “may” in § 1226(a) plainly signals Congress’ intent to establish a discretionary detention framework for those detained pursuant to such warrants. Moreover, Section 1226(a) expressly excludes certain “criminal” noncitizens from its discretionary framework—but contains no exclusion for anyone else. “That express exception” to Section 1226(a)’s discretionary framework “implies that there are no other circumstances under which” detention is mandated for noncitizens detained pursuant to an administrative warrant. *See Jennings*, 583 U.S. at 300 (citing A. Scalia & B. Garner, *Reading Law* 107 (2012)); *cf. Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (“that Congress has created specific exceptions” to a statute’s applicability “proves” that the statute generally applies absent those exceptions).³

³ Respondents’ interpretation of Section 1225(b)(2) also renders superfluous a recent amendment to Section 1226. The Laken Riley Act, codified at Pub. L. No. 119-1, 139 Stat. 3 (2025), created Section 1226(c)(1)(E), which mandates detention when a noncitizen is (i) inadmissible for having entered without inspection, engaging in fraud, or lacking entry documents; “and” (ii) is implicated in certain crimes. 8 U.S.C. § 1226(c)(1)(E). The conjunction “and” means detention is mandatory only if both criteria are satisfied. But under Respondents’ theory, Section 1226(c)(1)(E) was a meaningless amendment since, in their view, “all noncitizens who have not been admitted” are already subject to mandatory detention under Section 1225(b)(2). *Bostock*, 2025 WL 1193850, at *14. Because that is neither a permissible nor plausible reading of the statute, courts have rejected it. *See, e.g., Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025).

II. Respondents Failed to Address the Constitutional Violations in Petitioner's Case, Which Merit Immediate Release Irrespective of the Statute of Detention.

Beyond their statutory switch, Respondents offer no defense for Mr. Cuy Comes's redetention. They do not contend he received any individualized process or custody review prior to being jailed. They did not then and do not now contend that he poses a danger or a flight risk. *See Gonzalez*, 2025 WL 2961626, at *3 ("The undisputed facts are, therefore, that ICE summarily detained Gonzalez pursuant to its policy of arbitrary detention without affording him notice or opportunity to be heard.")

As this and many other courts have concluded, summary and purposeless detention is unconstitutional and merit immediate release. *See, e.g., Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *4 (S.D.N.Y. Aug. 15, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Lopez Benitez*, 2025 WL 2371588 at *9-12. The Court should order the same for Mr. Cuy Comes.

This Court has observed many times that in the Second Circuit, the well-known test for constitutionality of process is set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Yet Respondents fail to address that test at all—perhaps because the deprivation of Mr. Cuy Comes's liberty without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *4; *Valdez*, 2025 WL 1707737, at *4; *Martinez*, 2025 WL 2084238, at *9. The risk of erroneous deprivation in the absence of any individualized custody determination is enormous—and the public interest in detention nonexistent.

Because Mr. Cuy Comes's detention was unlawful *ab initio*, a bond hearing is not the appropriate or just remedy. As this Court has succinctly stated, "Such a hearing is no substitute for

the requirement that ICE engage in a ‘deliberative process prior to, or contemporaneous with,’ the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.” *Gonzalez*, 2025 WL 2961626, at *5 (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). “The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment.” *Id.*

So too here. Mr. Cuy Comes has challenged the constitutionality of his custody. *See Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (a prudential exhaustion requirement may be excused where the plaintiff or petitioner raises a “substantial constitutional question”). His detention even a day longer is unlawful and unnecessary.

III. Mr. Cuy Comes Has Robust Due Process Rights

Respondents’ contention that Mr. Cuy Comes, who has resided in New York City for over five years, has no constitutional rights flies in the face of over a century of Supreme Court case law and harkens back to the days of race-based exclusion acts. Even in the face of those laws, the Supreme Court held that noncitizens *present* in the United States are entitled to the full panoply of constitutional rights. *See Yamataya v. Fisher*, 189 U.S. 86, 101 (1903). It has not wavered from this basic holding since—irrespective of whether an individual’s presence in the U.S. is lawful or derives from a lawful admission. *See, e.g., Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Respondents attempt to elide these clear holdings by referencing the limited due-process rights of *excludable* noncitizens, Resp. Memo. at 11, 12, 14—but as Respondents explain, excludability was a historical legal concept applicable to individuals who had not *entered* the U.S. *Landon*, 459 U.S. at 28 (“only ‘entering’ aliens are subject to exclusion”); *Correa v. Thornburgh*, 901 F.2d 1166, 1171 (2d Cir. 1990) (petitioner was subject to exclusion, rather than deportation, because they “had not effected an ‘entry’”). Mr. Cuy Comes has indisputedly entered: he has resided here for over half a decade. Courts in this district have found individuals with much shorter residence to have due-process rights, even when initial entry was pursuant to parole. *See, e.g., Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *12 (S.D.N.Y. Sept. 12, 2025) (ordering release of a redetained noncitizen initially paroled into the U.S.); *Lopez*, 2018 WL 2932726, at *7 (same); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (same). Mr. Cuy Comes, who has resided here for five years, certainly has the same right to due process.

Because’s Petitioner’s ongoing detention violates his robust right to due process, he seeks his immediate release.

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to order his immediate release from custody.

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CERTIFICATE OF COMPLIANCE

Pursuant to this Court's Rules in Civil Cases 7.1(C), the above-named counsel hereby certifies that this Memorandum complies with the Local Rules on length. As measured by the word processing system used to prepare it, this memorandum contains 2515 words.