

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WENXIN LIANG,

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-9322 (MKV)

**PETITIONER'S OPPOSITION TO
RESPONDENTS' RETURN**

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

PRELIMINARY STATEMENT

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, two years after his release, as an "arriving alien" 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 clearly 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.

Finally, as the Respondents acknowledges in their Memorandum, 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. Petitioner contends that a similar remedy would be appropriate here given this ongoing violation of due process, and the unreasonableness of the government's statutory interpretation.

ARGUMENT

I. 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 October 2023, lived and worked in New York City for two years while lawfully pursuing his application for asylum, and was arrested by DHS-ICE while reporting at 26 Federal Plaza, New York, NY.

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. However, 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 two 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 every modern case addressing this issue, an individual whom DHS has admitted into the country for purposes of removal proceedings, supervised under § 1226(a), and integrated into the community cannot be retroactively transformed into the “functional equivalent” of an applicant stopped at the threshold.

This case is easily 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. Petitioner is not in expedited removal, and he does not seek admission. That type of challenge is squarely cognizable in habeas corpus and bears no resemblance to either *Thuraissigiam* or *Mezei*. In fact, a court in this District recently granted habeas relief in *Munoz Materano v. Arteta*, No. 1:25-cv-06137 (S.D.N.Y. Sept. 9, 2025) where DHS similarly misclassified a §1229(a) respondent as subject to §1225(b), holding that continued detention unlawful and that habeas was the appropriate remedy. *Munoz*, slip op. at *22 n.19.

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. After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this flawed interpretation does not deserve any deference. The BIA's abrupt reversal of nearly three decades of statutory understanding, combined with DHS's inconsistent application of §1225(b), further undermines the weight of *Hurtado*. This is especially so, given the lack of consistency to the BIA's current interpretation. *Id.* at 385-386.

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

¹ Petitioner was charged with inadmissibility under INA § 212(a)(6)(A). See Exhibit 8-3 of Respondents' Return.

A recent decision in this District recognizes that a noncitizen who has already entered the United States cannot be placed in § 1225's mandatory detention track merely because CBP later encounters them; such individuals, if detained at all, fall under § 1226." *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *1 n.1 (S.D.N.Y. Nov. 4, 2025). This case also recognizes that the government's argument "would be entirely inconsistent with the Laken Riley Act," Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025)). This understanding is consistent with the growing body of decisions rejecting DHS's attempt to stretch § 1225 to cover individuals who have long since entered the United States. *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at 7 (E.D.N.Y. Oct. 5, 2025).

Respondents' attempt to reclassify Petitioner also collapses when considering the documentary evidence demonstrating his full compliance with ICE reporting requirements. The administrative record therefore confirms that Petitioner remained continuously detained or supervised under § 1226(a), and no authority permits DHS to now invoke § 1225(b).

For all these reasons, the statutory framework, modern case law, and the undisputed administrative record compel the conclusion that Petitioner is detained under § 1226, not § 1225(b)(2)(A). He does not fall within any category mandating detention under the INA, and DHS's contrary position is legally unsupportable.

II. 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).

The factors here fall in Petitioner’s favor. First, his 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 November 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 more than two years. He attended every hearing, self-reported to ICE exactly as instructed, maintained a stable address, and filed his asylum application in good faith. The government’s interest in enforcing immigration laws cannot justify depriving a person of liberty without any procedural safeguards, particularly where the agency already exercised its discretion to release Petitioner in 2023 and none of the facts have changed. 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 when Respondents have failed to follow their own laws and regulations.

In the absence of any initial individualized determination makes this case far more serious than typical prolonged-detention cases: here, the constitutional defect is structural, not merely temporal. As the Supreme Court has held, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 17 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Thus, post-deprivation review cannot retroactively legitimize the government’s failure to exercise discretion at the outset.

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. 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. For these reasons, the Due Process Clause demands not administrative exhaustion, but immediate habeas relief.

III. Should the Court Determine That Petitioner Is Detained Pursuant to §1226(a), Requiring Petitioner to Pursue a Bond Hearing Would be Practically Futile

A. Exhaustion of Administrative Bond Remedies Would Provide No Meaningful Relief

Even if the Court determined that § 1226(a) governs Petitioner's detention, requiring him to exhaust administrative remedies through a bond hearing would be futile. Federal courts have acknowledged that, in the wake of *Matter of Yajure-Hurtado*, DHS now treats noncitizens charged under INA § 212(a)(6)(A)(i), stripping immigration judges of bond jurisdiction and dismantling decades of settled practice that classified these individuals as § 1226(a) respondents eligible for bond. Even where courts have restored jurisdiction, the hearings are not meaningful. DHS routinely opposes release, relying on speculative allegations of flight risk or danger.

Although “there is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention in federal court,” *Nian Liu*

v. Almodovar, No. 1:25-cv-09256 (ER), slip op. at 10 (S.D.N.Y. Dec. 2, 2025) (first quoting *Araujo Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); then quoting *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021)), courts in this District have treated exhaustion as a prudential consideration rather than a jurisdictional bar, particularly where the recognized exceptions apply. As *Liu* further explained, exhaustion may be excused 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) in certain instances a plaintiff has raised a substantial constitutional question.” *Quintanilla* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).

Here, the exhaustion is excused based on the first, third, and fourth exceptions. Petitioner was detained without any individualized assessment, which cannot be cured through later EOIR review. Once a noncitizen has been taken into custody without the required, case-specific determination, any post-deprivation hearing is inherently inadequate. *See Liu* at 10. This makes it clear that the courts of this District may raise a substantial constitutional question that cannot be resolved administratively. Given the due-process violation present, Petitioner is entitled to release.

The Court’s reasoning in *Munoz* confirms that a bond hearing cannot cure DHS’s statutory misclassification. When DHS erroneously invokes § 1225(b) to justify detention, the legal defect is structural and must be corrected through habeas, not post-deprivation administrative review. Where the administrative process cannot provide effective relief, exhaustion is not required. *See McCarthy v. Madigan*, 503 U.S. 140 (1992) (recognizing that judicially imposed exhaustion may be excused where the administrative remedy is inadequate or cannot provide the relief requested).

B. Petitioner Is Not a Member of the *Maldonado Bautista* Bond-Eligible Class

On November 25, 2025, the Central District of California issued a nationwide class certification order in *Maldonado Bautista v. Santacruz*, extending declaratory relief to a newly defined “Bond Eligible Class.” *See* Exhibit 1. Petitioner addresses it for completeness and confirms that he does not fall within the class definition. Because Petitioner was apprehended at the border upon arrival—placing him outside the scope of that order—the *Maldonado Bautista* ruling has no bearing on the statutory and constitutional issues in this habeas action.

The class certified in *Maldonado Bautista* expressly excludes all individuals who “were apprehended upon arrival.” *Id* at 2. (defining the class to cover only noncitizens who: (1) entered without inspection, (2) “were not or will not be apprehended upon arrival,” and (3) are not otherwise subject to detention under §§ 1226(c), 1225(b)(1), or 1231). Petitioner was apprehended at or near the border immediately after entry. *See* Respondents’ Return Exhibits 8-1 and 8-3. Although not a member of the Bond Eligible Class, a federal court has certified a class action which rejects the very statutory premise the Government invokes here. The court expressly rejected the BIA’s decision in *Matter of Yajure-Hurtado*—the same interpretation the Respondents rely upon here – of treating EWI respondents as mandatory detainees under § 1225(b)(2)(A).

That conclusion is a statement of law, not a class-limited remedy, and it directly refutes the legal premise underlying Petitioner’s re-detention. Thus, even though Petitioner is not a class member, the court’s repudiation of Hurtado’s reasoning strongly reinforces that DHS lacked any lawful statutory authority to convert Petitioner—two years after his § 1226(a) release—into a § 1225(b)(2) mandatory detainee. The invalidation of Hurtado’s interpretation therefore strengthens Petitioner’s claim that his re-detention is unlawful and violates due process.

Moreover, the inconsistency between federal judicial decisions and EOIR’s internal instruction to immigration judges to ignore *Maldonado Bautista* and continue applying *Hurtado*.

See Exhibit 2. This further illustrates that any administrative bond process is incapable of providing meaningful, uniform, or legally accurate relief. When one federal court declares DHS's *Hurtado*-based policy unlawful, while the adjudicatory body overseeing bond determinations instructs judges to disregard that ruling, the result is systemic inconsistency and an administrative process that cannot reliably vindicate statutory or constitutional rights. This divergence confirms the futility of requiring Petitioner to pursue a bond hearing before the EOIR. In such a landscape, requiring Petitioner to seek relief through that same administrative channel would serve no purpose, as the outcome is predetermined by policy rather than law.

Thus, while Petitioner is not a *Maldonado Bautista* class member and cannot obtain relief under that order, the decision's rejection of *Hurtado*, coupled with EOIR's refusal to follow binding federal authority, underscores both the unlawfulness of Petitioner's re-detention and the futility of any bond-hearing remedy. Petitioner therefore respectfully request this court to evaluate Petitioner's custody strictly under the statutory basis DHS actually invoked—§ 1226(a) – and under the substantive due-process violations detailed in the Petition and this Reply.

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. Grant such other and further relief as the Court deems just and proper.

Dated: December 3, 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

CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c) and Rule 4(A)(iii) of the Individual Rules of Practice in Civil Cases of Judge Mary Vyskocil, the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules and the page limitations of Judge Vyskocil Individual Practices. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 2751 words in this memorandum.

/s/ Jed S. Wasserman

Jed Wasserman

LAW OFFICE OF NG & WASSERMAN PLLC