

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

JOSE FLORES PALMA,
Petitioner,

v.

PAUL ARTETA, in his official capacity
as Sheriff of Orange County, New York
and Warden of the Orange County
Correctional Facility, *et al.*,
Respondents.

Civil Action No. 25-9340

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

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PRELIMINARY STATEMENT

Respondents continue to offer no reason why Mr. Flores was detained when attending a check-in appointment with Immigration and Customs Enforcement (ICE) on March 31, 2025. They do not contest the allegations that his detention was part of a broader campaign to indiscriminately arrest and expeditiously remove noncitizens, irrespective of whether they had been paroled into the United States and were following all guidelines set by ICE to seek asylum, like Mr. Flores.

Instead, Respondents now claim that they in fact revoked Mr. Flores's parole earlier, in December 2024. But they merely re-served a Notice to Appear at that time and did not detain him. They next suggest they learned new information in January 2025—that Mr. Flores had a past case for robbery in El Salvador—but they did not take Mr. Flores into custody then. And Respondents do not disclose that this case was known to the government when Mr. Flores was paroled in November 2023. Finally, Respondents now claim it was a mistake to have sought dismissal of his immigration court proceedings and expedite removal through reinstatement, claiming they did not realize he had been paroled. Yet that is belied by documents filed by ICE before the immigration court prior to seeking dismissal, that clearly indicate he was paroled.

Respondents now argue that Mr. Flores has no due process rights whatsoever to review of his detention as an “arriving alien” who has not been admitted to the United States. But Respondents overstate the scope of the “entry fiction,” which does not apply to detention, and do not acknowledge the bedrock legal principle that the Due Process Clause applies to “all persons within the territory of the United States.” *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). In addition, Respondents’ argument that Mr. Flores is detained under 8 U.S.C. § 1225(b)(2)(A) is out of step with a growing number of courts that have explained that statute requires an individual

to be “seeking admission.” Respondents do not even attempt to show—nor could they—that this provision applies to Mr. Flores.

Mr. Flores thus respectfully requests that this Court order his immediate release or, in the alternative, order that he be provided a bond hearing at which the government must bear the burden of establishing the need for his continued detention.

ARGUMENT

I. Mr. Flores’s detention without changed circumstances, notice, or a hearing violated due process and ICE regulations.

A. Respondents do not dispute that Mr. Flores was redetained without changed circumstances, a notice, or hearing.

Respondents do not claim to have made an individualized determination regarding Mr. Flores’s redetention on March 31, 2025, nor do they point to any changed circumstances that provide a reason to redetain him after release on parole. Although Respondents state ICE obtained documentation in January 2025 regarding Mr. Flores’s criminal history in El Salvador, ECF 9 (Resp. Mem. of Law, hereinafter Resp.) at 3, they do not acknowledge that this information was not new.¹ Respondents were aware of Mr. Flores’s criminal history when he was granted parole in November 2023. *See* Pet. ¶ 19.² This information was included in the Form I-213 drafted by ICE when he was paroled on November 10, 2023. *See* Ex. H (Tab D, Form I-213, Record of Deportable/Inadmissible Alien, dated Nov. 10, 2023).

¹ Respondents erroneously state the attempted robbery conviction occurred in 2010. As Mr. Flores stated, the conviction occurred around 2007. *See* ECF 1-1 (Flores Decl.) at ¶ 6. The document they filed corroborates this date, as it shows that on April 14, 2010, Mr. Flores’s sentence was commuted to probation. ECF 11-5.

² The exhibits attached to this Reply are consecutively lettered with the exhibits attached to the Petition, and thus begin with Exhibit H.

Nor could Respondents have had any other basis to detain Mr. Flores. Since filing the instant Petition, Respondents have conceded that ICE's motion to dismiss to reinstate Mr. Flores's prior removal order was error. Resp. at 3–4. Respondents claim that a review of his records around the time of his arrest “did not accurately reveal that [he] was paroled into the United States by CBP in November 2023.” *Id.* at 3. This is contradicted by the record. DHS itself submitted evidence to the immigration court on April 8, 2025, stating Mr. Flores had been paroled. *See* Ex. H at 2.³ One week later, DHS filed its motion to dismiss. Mr. Flores repeatedly raised his parole in his opposition, *see* Ex. J (Flores Opposition to DHS Motion to Dismiss, filed Apr. 23, 2025), and at a hearing, *see* Pet. ¶ 29; *see also* Ex. I (Transcript of April 24, 2025, Hearing at 9). The immigration judge then held, incorrectly, that Mr. Flores's parole was irrelevant, and the DHS attorney stated that he agreed with her analysis. *Id.*

On August 11, 2025, Mr. Flores submitted a brief to the Board of Immigration Appeals (BIA), arguing it was improper to dismiss his immigration court proceedings to reinstate removal, given that he had been paroled. *See* Ex. K (Flores BIA Appeal Brief, filed Aug. 11, 2025). Yet, Respondents waited another three months before moving to remand for Mr. Flores's “INA § 240 proceedings to proceed.” Ex. L (Joint Motion to Remand Proceedings, filed Nov. 14, 2025).

³ The government filed two different Form I-213s in support of their opposition. ECF 11-2 contains Form I-213, dated November 10, 2023. ECF 11-4, contains Form I-213, dated April 10, 2025. Both confirm that Mr. Flores was paroled into the United States (ECF 11-2 at 2; ECF 11-4 at 2-3). While DHS filed the 2023 Form I-213 in Mr. Flores' removal proceedings, DHS did not file the 2025 Form I-213 in the removal record. Notably, the version of the 2023 Form I-213 filed in immigration court and the version filed by the government at ECF 11-2 contain different redactions. *See* Ex. H, Form I-213, dated Nov. 10, 2023, filed in immigration proceedings. The unredacted version of the Form I-213 also shows that Mr. Flores was thoroughly vetted through government database checks. *Id.*

B. 8 U.S.C. § 1226(a) is the applicable custody provision, not § 1225(b)(2)(A).

Although Respondents have admitted that they erred by seeking dismissal and reinstating Mr. Flores's removal order, they continue to maintain that he should be detained, asserting the statute governing his detention is 8 U.S.C. § 1225(b)(2)(A) because he is "indisputably an arriving alien." Resp. at 4 n.1. Elsewhere, Respondents state detention is proper because Mr. Flores is an "applicant for admission." *Id.* at 7 n.2. However, being an "arriving alien" or an "applicant for admission" is insufficient to be detained under Section 1225(b)(2)(A).

i. Mr. Flores is not "seeking admission" as required under § 1225(b)(2)(A).

To detain an individual under Section 1225(b)(2)(A), three requirements must be met: an "examining immigration officer" must determine that an individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." *Romero Perez v. Francis, et al.*, No. 25-CV-8112 (JGK), 2025 WL 3110459, at *2 (S.D.N.Y. Nov. 6, 2025). Nowhere in the text is there a requirement that an individual be an "arriving alien." That term is defined separately by regulation and is not coextensive with Section 1225(b)(2).⁴

Mr. Flores does not contest that he is an applicant for admission under the relevant statutory definition, 8 U.S.C. § 1225(a)(1), as he is present in the United States and has not been admitted. However, to meet the definition of Section 1225(b)(2), he needs to be both an applicant for admission *and* "seeking admission."

As numerous courts in this district and nationwide have concluded, "seeking admission" is not equivalent to "applicant for admission." An alternate finding "would render the phrase 'seeking

⁴ See 8 C.F.R. § 1.2 (defining an "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry. . . .").

admission' surplusage and disregard the statute's present-tense requirement." *Romero Perez*, 2025 WL 3110459, at *2; *Villegas v. Francis*, No. 1:25-CV-09199 (JLR), 2025 WL 3215597, at *3–4 (S.D.N.Y. Nov. 18, 2025); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, *3 (S.D.N.Y. Oct. 28, 2025); *Lopez Benitez v. Francis*, No. 25-CV-5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025); *Alvarez Ortiz v. Freden*, No. 25-CV-960 (LJV), 2025 WL 3085032, at *7 (W.D.N.Y. Nov. 4, 2025); *Quitizaca v. Bondi*, No. 6:25-CV-6527 (EAW), 2025 WL 3264440, at *4 (W.D.N.Y. Nov. 24, 2025); *Guerrero v. Noem*, No. 25-cv-5881 (EK), 2025 WL 3214787, at *3-6 (E.D.N.Y. Nov. 18, 2025); *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *7-8 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *4-9 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *9-12 (E.D.N.Y. Oct. 6, 2025).⁵

Mr. Flores is not "seeking admission." Admission is defined as "the lawful entry of the alien. . . after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). An individual who has been admitted is then eligible for, among other things, adjusting status to that of a lawful permanent resident. 8 U.S.C. § 1255. Mr. Flores, in contrast, was paroled into the United States to seek asylum. *See* Ex. H at 2. Obtaining asylum is not an "admission." *See Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (finding grant of asylum is not an "admission"); *Sanchez v.*

⁵ Numerous courts have recently been asked to address a similar question regarding the scope of Section 1225(b)(2), given a novel interpretation by the government breaking with decades of practice that anyone who entered without inspection should fall within that category. The vast majority of courts have rejected that argument, and in doing so explained that it would render the phrase "seeking admission" surplusage. *See Demirel v. Fed. Detention Ctr.*, No. 25-cv-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (explaining that there are now "288 district court decisions addressing this issue" and in "all but six, the Government's interpretation of the INA . . . was rejected), attaching cases at appendix at ECF No. 11-1.

Mayorkas, 593 U.S. 409, 415 (2021) (“Lawful status and admission. . . are distinct concepts in immigration law: Establishing one does not necessarily establish the other.”), *aff’ing Sanchez v. Sec’y United States Dep’t of Homeland Sec.*, 967 F.3d 242, 245 (3d Cir. 2020) (“[A] grant of asylum places the individual in valid immigration status but is not an ‘admission.’”).

The legislative history of Section 1225 confirms that Congress did not intend for it to provide a basis to detain individuals present in the country, whether without inspection or following a grant of parole. “Congress focused its concern on noncitizens physically arriving at the border for entry, not those already physically present within the country.” *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *29 (D.D.C. Aug. 1, 2025). As the Supreme Court explained in *Jennings v. Rodriguez*, Section 1225 applies to “certain aliens seeking admission *into* the country,” while Section 1226, in contrast, is a “default rule” that “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” 583 U.S. 281, 289, 303 (2018) (emphasis added); *see also Nielsen v. Preap*, 586 U.S. 392, 396–97 (2019) (holding that Section 1226(a) applies to noncitizens “present in this country”).

ii. The entry fiction does not apply to detention.

Respondents argue Mr. Flores should be treated as if he were still at the border as an “applicant for admission.” Resp. at 7 n.2. Again, Respondents conflate the requirements to be an “applicant for admission” under Section 1225(a)(1), and “seeking admission” under Section 1225(b)(2)(A). Even at the border, Mr. Flores was seeking *asylum*, which is not an admission. *See* Ex. H at 2 (“FLORES came to the SYS POE seeking asylum to the U.S.”).

Even if Mr. Flores could have been regarded as “seeking admission” in November 2023 at the border and initially subject to Section 1225(b)(2), once he was paroled in, he is not forever

subject to redetention under Section 1225(b)(2). The text of 1225(b)(2) must be satisfied at the time of detention.

In support of a contrary view, Respondents cite *Leng May Ma v. Barber*, 357 U.S. 185 (1958) and *United States ex rel. Kordic v. Esperdy*, 386 F.2d 232 (2d Cir. 1967), which describe the so called “entry fiction.” See Resp. at 5. But as the court explained in *Coal. for Humane Immigrant Rts. v. Noem*, considering the scope of a related provision in Section 1225, the “entry fiction” does not support a finding that “parolees are always considered ‘arriving,’” such that they meet the statutory definitions in Section 1225 that are phrased in the present tense like “seeking admission.” 2025 WL 2192986, at *28–29; see *id.* at *23 (explaining that *Leng May Ma* “interpreted different statutory language . . . in a different, since replaced provision of the INA”).

Leng May Ma demonstrates only that “Congress did not intend for parole of an alien to constitute an alien’s legal entry or admission to the United States.” *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007). The “entry fiction” means simply that “an applicant for admission to the country is treated as if he were stopped at the border for the purposes of his application for admission.” *Al-Thuraya v. Warden*, No. 25-cv-2582 (AS), 2025 WL 2858422, at *3 (S.D.N.Y. Oct. 9, 2025). “[T]he mere fact of his physical presence within our borders provides him no greater constitutional protection *as to his application* than if he were outside the country.” *Id.* (emphasis in original); accord *Kordic*, 386 F.2d at 235 (rejecting claims under prior version of INA that an individual paroled into United States did not receive enough process in consideration of application). This doctrine has no applicability regarding detention, or what statute of detention applies.

As such, other courts within this circuit have found that the redetention of petitioners, like Mr. Flores, who were allowed into the United States via parole is governed by Section 1226(a).

See, e.g., Munoz Materano v. Arteta, No. 25-cv-6137 (ER), 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025) (finding 1226(a) applied, not 1225, to petitioner who entered the United States after making an appointment via CBP One and was granted parole); *O.F.B. v. Maldonado*, No. 25-CV-6336 (HG), ECF 19, Mem. & Order at 8–9 (E.D.N.Y. Nov. 25, 2025) (same). “[P]arole status speaks only to whether [Petitioner] has been admitted, not whether he was seeking admission at the time of his detention in [August], as that term is used in Section 1225(b)(2)(A),” and, therefore, the government’s “reference to the entry fiction . . . conflates Section 1225(b)(2)(A)’s distinct requirements that an alien be an applicant for admission, and that he be seeking admission.” *Sarmiento Guerrero v. Noem*, No. 25-CV-5881 (EK), 2025 WL 3214787, at *6 (E.D.N.Y. Nov. 18, 2025).

iii. Respondents’ own documents show they understood Mr. Flores’s March 2025 detention to be pursuant to Section 1226(a).

Respondents acknowledge Mr. Flores was served with documents at the time of his redetention that are only applicable to arrests for individuals detained under Section 1226, but state this was “error.” Resp. at 3. Far from error, this demonstrates that ICE itself—consistent with the statutory language discussed above—understood its authority to detain Mr. Flores was Section 1226(a), not 1225. A warrant is required to make an arrest under 1226(a), not 1225. *See Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1226(a)). And the Form I-286, Notice of Custody Determination specifically lists Section 1226 as the basis for detention. *See Hyppolite*, 2025 WL 2829511 at *8-9 (ICE’s issuance of Form I-286 is relevant to Court’s finding that Petitioner was detained under Section 1226(a)).

Moreover, the Form I-213 that was generated shortly after Mr. Flores’s arrest in March 2025 notes that he was given a “Velesaca Advisal Form.” *See* ECF 11-4 at 4. This refers to *Velesaca v. Decker*, a class action brought on behalf of individuals detained under 1226(a), who argued the

New York Field Office failed to conduct individualized custody determinations as required by statute and regulation. 458 F. Supp. 3d 224, 227 (S.D.N.Y. 2020). As a result of that litigation, the New York Field Office must provide a form describing the right to individualized review and a bond hearing to all individuals it detains under 1226(a). *See* 1:20-cv-1803, Dkt. 175 (Settlement Agreement), Exhibit B (“Advisal Notice”).

Taken together, these documents are further evidence, consistent with the statutory text, that 1226(a) applies. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *4-5 (finding Section 1226(a) applied in part because ICE had always treated applicant as subject to 1226(a)); *Hyppolite*, 2025 WL 2829511 at *8-9 (finding Respondent’s classification of Petitioner’s detention under Section 1226 in documentation is “relevant to the Court’s assessment of the credibility and good faith of” Respondent’s position that the Petitioner is detained under 1225).

C. The lack of individualized review prior to Mr. Flores’s detention violates due process and ICE’s own regulations, requiring release.

Respondents’ failure to provide any individualized review prior to detaining Mr. Flores under Section 1226(a) violates their obligations under that statute, as well as due process. This violation requires release. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *10–11 (explaining that “[a]t a minimum . . . § 1226(a) requires a valid exercise of DHS’s discretion,” and where “Respondents have not offered any explanation for [the] detention other than their initial assertion that it is mandatory—that is, that it is *non-discretionary*” that is “precisely the opposite of an exercise of discretion, which entails some sort of judgment”); *Munoz Materano*, 2025 WL 2630826, at *15 (finding redetention without any individualized assessment such as “any change in circumstances” violates due process and requires release) (collecting cases); *Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025) (granting release where the petitioner’s “detention was illegal from the start because of the lack of any due process”);

Savane v. Francis, No. 1:25-CV-6666 (GHW), 2025 WL 2774452, at *8 (S.D.N.Y. Sept. 28, 2025) (“Nor did Respondents here provide any explanation or reasoning for why or how they revoked Petitioner’s parole.”); *see also* Pet. ¶¶ 62–64 (collecting cases).

A bond hearing would not be a sufficient remedy for this violation, as “[s]uch 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.” *Lopez Benitez*, 2025 WL 2371588, at *13 (quoting *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3(S.D.N.Y. July 13, 2025)).

Respondents violated their own regulations, which also require an individualized finding prior to revoking parole, in addition to violating due process. *See* Pet. ¶ 41. Respondents never allege that ICE made such findings. Nor could they, as the purpose for Mr. Flores’s parole—to seek asylum in immigration court—had not concluded, and there had been, and continue to be, no changed circumstances since his parole affecting the humanitarian or public benefit considerations.

Respondents also do not contest that Mr. Flores was not provided written notice of parole revocation during his March 31, 2025 arrest. *See* Pet. ¶ 60. Respondents claim instead that they did not violate their regulations at the time of his detention because they had actually revoked Mr. Flores’s parole months earlier when they served a Notice to Appear (NTA) in December 2024. Resp. at 12. However, that could not have revoked parole, as it was the same NTA that Mr. Flores had previously been served when he was issued parole. *See* ECF 1-5 (Notice to Appear). Although the bottom of the first page of the NTA appears to have been updated to fill in his upcoming court date and a new certificate of service was generated, the last page of the NTA listing his charge of removability was not modified at all, listing the same date as Mr. Flores’s parole, November 9, 2023. *Id.* His parole was not immediately cancelled at the same time it was granted, and re-serving

the same document (even with updates to the date of court hearing) could not suffice to revoke parole.

In addition, Mr. Flores was not taken into custody at the time his parole was allegedly revoked when served with the NTA again in December 2024. As the Third Circuit has explained, an NTA “does not normally revoke parole in any literal, physical sense,” and where it is served but an individual is not detained, under the regulations, it would appear that “[p]erhaps the Notice to Appear revoked his parole, but, if so, he was immediately reparaoled.” *Zheng v. Gonzales*, 422 F.3d 98, 120–21 (3d Cir. 2005). The regulations require that if a “removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless . . . the public interest requires that the alien be continued in custody.” 8 C.F.R. § 212.5(e)(2)(i). Even if notwithstanding these regulations, service of the NTA was sufficient to revoke parole in December 2024, Respondents also do not make any claim that there was an individualized review of the need to revoke parole at that time.⁶

D. Even if Section 1225 applies, Mr. Flores’s redetention without individualized review, notice and a hearing, still violated due process.

Respondents claim that if Petitioner’s detention is governed by Section 1225(b)(2), he has no right to any additional process: “[w]hatever procedure authorized by Congress is, it is due process.” Resp. at 6. In other words, Respondents’ position is that Mr. Flores—who lived at liberty for a year and a half inside the United States with a DHS-approved work permit and social security

⁶ Respondents also argue that Petitioner’s APA claim fails because claims challenging detention must be brought through habeas, not the APA. Resp. at 13. However Petitioner *has* brought the APA claim through habeas. The APA itself specifies that APA challenges can sound in habeas. *See* 5 U.S.C. § 703. There is no other “special statutory review proceeding” related to detention that would preclude an APA claim here. *Id.* Courts regularly entertain APA claims alongside habeas claims. *See, e.g., Ozturk v. Trump*, 779 F. Supp. 3d 462 (D. Vt. 2025); *I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 186 (D.D.C. 2015) (“APA and habeas review may coexist”). Indeed, *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), was itself a habeas petition challenging the immigration agency’s failure to comply with its own regulations.

number and with no arrests—has no recourse to have his custody reviewed. Respondents allege he has only statutory rights; and no due process rights at all. This defies the bedrock principle that “all persons within the territory of the United States” are protected by the Fifth Amendment. *Wong Wing*, 163 U.S. at 238. Respondents themselves seem to acknowledge this is not correct. *See* Resp. at 6 (citing the proposition that “once passed through our gates, even illegally,” noncitizens are entitled to due process) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)).

As a judge in this district recently explained when rejecting this exact argument, “the entry-fiction exception is inapplicable” because Mr. Flores’s due process claims “do[] not concern his application [for admission] at all, just the legality of his detention while” that application is pending in immigration court. *Al-Thuraya*, 2025 WL 2858422, at *4. Thus, “[t]he Due Process Clause protects petitioner, a person inside the United States, from unlawful detention.” *Singh v. Andrews*, No. 25-cv-801, 2025 WL 1918679, at *6 (E.D. Cal. July 11, 2025); *Rojas v. Almodovar*, No. 25-CV-7189 (LJL), 2025 WL 3034183, at *8 (S.D.N.Y. Oct. 30, 2025) (due process applies to noncitizen on parole).

Respondents’ position—that Mr. Flores is not entitled to due process protections because he is, like *Mezei*, treated as if stopped at the border—would require this Court to find that any individual the government paroles into the country, including those who may be eligible to adjust status to a lawful permanent resident through a U.S. citizen spouse, can be detained at any time, without any reason, let alone notice or review, and without any opportunity to seek a custody redetermination hearing no matter how long they have lived in liberty in the United States or their family ties. *Mezei* cannot be read so broadly. It was an exclusion case that is factually distinguishable, as Mr. Flores was granted parole and lived in the U.S. for a year and a half. Indeed,

Mr. Flores’s case is analogous to *U.S. ex rel. Paktorovics v. Murff*, in which the Second Circuit held that the parole of Hungarian refugees could not be revoked “without a hearing at which the basis for the discretionary ruling of revocation may be contested on the merits.” 260 F.2d 610, 612 (2d Cir. 1958); *see also* Pet. ¶ 63–64.

Moreover, Respondents’ position that Mr. Flores does not have due process rights “misstates the law,” as it is a well-established principle that “[t]he Due Process Clause of the Fifth Amendment ‘covers noncitizens, whether their presence here is lawful, unlawful, temporary or permanent.’” *Munoz Materano*, 2025 WL 2630826, at * 12 (internal citations omitted). Indeed, the main case Respondents rely on, *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), actually supports the petitioner’s rights to due process: “*Thuraissigiam* serves to reinforce the principle that those present in the U.S., even undocumented individuals are protected by the Fifth Amendment.” *Id.* at *12. *Thuraissigiam*, unlike this case, involved an individual seeking admission into the United States and addressed only the scope of due process with respect to *admission* decisions. Here, Mr. Flores simply seeks release from unlawful detention while already inside the United States.

Accordingly, if this Court finds that Mr. Flores is detained under Section 1225, this Court must nonetheless apply the *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976) factors and find that redetention absent changed circumstances, notice or a hearing violates due process regardless of the statutory basis for such detention. *See also* *O.F.B.*, No. 25-CV-6336, ECF 19 (Order) at 13 (“[R]egardless of whether Section 1225 or 1226 applies to the facts here, the application of the previously discussed *Mathews* test leads to the same inevitable conclusion: Petitioner has been, and continues to be detained in violation of the Fifth Amendment.”); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025) (“Respondents denied

Petitioner constitutionally adequate protections before depriving her of her liberty interest in her parole.”).

II. Regardless of which statutory provision applies, Mr. Flores’s prolonged detention of nearly eight months without a bond hearing violates due process.

Respondents do not contest that under *Velasco Lopez v. Decker*, due process requires that an individual detained under Section 1226(a) for a prolonged period must be provided with a bond hearing at which the government bears the burden of proof. 978 F.3d 842 (2d Cir. 2020). The Second Circuit has made clear that seven months of detention is prolonged. *See Black v. Decker*, 103 F.4th 133, 137 (2d Cir. 2024). In the event the Court does not grant release, Petitioner urges the Court to order that he be provided a bond hearing before a neutral arbitrator with the burden on the government.

The same result should occur even if this Court finds that Section 1225(b)(2) applies. The only argument Respondents raise against providing Mr. Flores a bond hearing is that he has no due process rights at all. As addressed *supra* Section I.D., Respondents are incorrect. *See also* Pet. ¶ 78 (collecting cases granting bond hearing to individuals detained under 1225).

Respondents do not otherwise contest the analysis of the *Mathews* factors set forth in the petition. *See* Pet. ¶ 68–78. In fact, the risk of erroneous deprivation has only been highlighted since the petition was filed: Respondents admit they *erred* in seeking to dismiss Mr. Flores’s removal proceedings. *See* Ex. L (Joint Motion to Remand). That error was not inadvertent. It was part of a coordinated campaign to detain individuals without basis even at their immigration appointments and to remove them through expedited processes, which Respondents do not contest. *See* Pet. ¶ 50–59. This erroneous decision has caused Mr. Flores to be detained for nearly eight months unnecessarily, without any individualized review of the need for his detention, and without the opportunity to apply for asylum. He could have remained at liberty during this time, continuing to

seek asylum in immigration court. Due process requires that he at least be afforded an individualized bond hearing now, with the burden on the government.

III. Mr. Flores's arrest violated the Fourth Amendment.

The Fourth Amendment prohibits “unreasonable” seizures, including arrests, *see* U.S. Const. amend. IV, and its “protections . . . extend to non-citizens.” *Zuniga-Perez v. Sessions*, 897 F.3d 114, 122 (2d Cir. 2018). Respondents had no probable cause to arrest Mr. Flores given their previous grant of parole and their prior knowledge of his criminal history when they granted parole. *See* Exh. H. The issuance of Form I-200 warrant, which Respondents have not filed, does not speak to the probable cause to arrest Mr. Flores. Indeed, no facts had changed since his parole grant in November 2023 and there was no basis to believe he was a flight risk; on the contrary, Respondents arrested Mr. Flores when he was attending a check-in with immigration officers, one of many that he attended while under ICE supervision and monitoring, including via an ankle monitor. *See* ECF 1-1 (Flores Decl.) at ¶ 8.

Because “Respondents have not asserted any new circumstances about [Mr. Flores], nor any particular circumstances from [March 31, 2025] that would have reasonably triggered his arrest, . . . Respondents violated his Fourth Amendment rights.” *Munoz Materano*, 2025 WL 2630826, at *17; *id.* at *2-3 (describing the petitioner’s grant of parole in 2023 after presenting himself at the border pursuant to a scheduled appointment and subsequent arrest at immigration court).

IV. Interim release under *Mapp v. Reno* is appropriate.

This Court should grant immediate release pending adjudication of the habeas petition under *Mapp v. Reno*, 241 F.3d 211 (2d Cir. 2001). Mr. Flores’s claims are substantial, as explained above. Respondents state *Mapp* relief would be warranted in cases involving “unusual delay in the

appeal process” and that is true here: Respondents concede it was a mistake to move to dismiss his proceedings, which they defended on appeal for months before agreeing to remand. In addition, Mr. Flores’s deteriorating mental and physical health in detention are extraordinary circumstances. *Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D.N.Y. 2020) (“Severe health issues have been the prototypical but rare case of extraordinary circumstances that justify release pending adjudication of habeas.”).

CONCLUSION

For the foregoing reasons, Mr. Flores respectfully requests that the Court grant his emergency petition for a writ of habeas corpus and order Respondents to immediately release him or, alternatively, order that he be provided a bond hearing with the burden on the government.

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Brooklyn, New York

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court’s Local Civil Rules, as enlarged by the Court’s grant of Petitioner’s motion to file an enlarged brief of up to 6,500 words. As measured by the word processing system used to prepare it, this memorandum contains 5,206 words.