UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NASEER AHMED, A# [redacted] Petitioner, v. TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, et al., Respondents.	Case No. 6:25-CV-6662-EAW

Reply in Opposition to Motion to Dismiss and in Further Support of Petition for Writ of Habeas Corpus

I. BACKGROUND

Naseer Ahmed is a citizen of Pakistan and a resident of New York. Petitioner entered the United States without authorization in 2016. He was initially detained by the Department of Homeland Security and processed for expedited removal. However, an asylum officer found that he established a credible fear of persecution if returned to Pakistan, a determination which entitled him to pursue full relief of removal before the Executive Office of Immigration Review. He filed an application for asylum, withholding of removal, and protection under the Convention Against Torture with the Immigration Court in New York City. In June of 2016, DHS released him from custody pending the completion of his removal proceedings. Mr. Ahemd is also the beneficiary of an approved I-130 Petition for Alien Relative filed by his U.S. citizen spouse. Petitioner also

has a three-year-old U.S. daughter and pending I-601a, Application for Provisional Unlawful Presence Waiver, filed with the U.S. Citizenship and Immigration Services ("USCIS"). If USCIS approves the I-601A, then Petitioner will depart the United States and apply for an immigrant visa to return as a lawful permanent resident. See, generally ECF No. 1.

Petitioner's application for asylum, withholding of removal, and protection under the Convention Against Torture were denied, and he was ordered removed to Pakistan on September 27, 2021. Petitioner timely appealed that denial with the Board of Immigration Appeals ("BIA" or "the Board"). While that appeal was pending, Petitioner filed a Motion to Remand with the BIA. The basis for the Motion to Remand was that Petitioner had new and material evidence of an alternative ground for relief, namely, an approved I-130 Petition for Alien Relative of which he was the beneficiary and a pending I-601A, Application for Provisional Unlawful Presence Waiver. The appeal to the BIA was denied on November 24, 2025, but the BIA did not decide on the motion to remand. Petitioner filed a Petition for Review and Emergency Stay of Removal with the Second Circuit on December 2, 2025. See, Exhibit 1.

The government arrested and detained Petitioner on August 31, 2025, while he was visiting his brother-in law at an army base. His detention was without cause and without regard to any changed circumstances in his case as, at the time of his re detention, his BIA appeal was still pending. The Petitioner filed a Petition for Writ of Habeas Corpus on November 13, 2025, with this Court seeking immediate release from detention, or in the alternative, an immediate bond or custody hearing, and a stay of removal, meaning, Respondents cannot transfer Petition outside this Western District of New York. This Court then issued an order for Respondents to respond by December 5, 2025. The Court also issued a Temporary Restraining Order requiring 72 hours' notice prior to transfer outside the Western District of New York. After this Court entered its

scheduling order, the BIA dismissed Mr. Ahmed's appeal. Respondents submitted a Motion to Dismiss on December 2, 2025. On that same date, Mr. Ahmed filed a Petition for Review and a Motion to Stay Removal with the Second Circuit, which are pending resolution. To date, Petitioner is detained at the Buffalo Federal Detention Facility in Batavia, New York ("Batavia").

In this Petition, Respondents argue that the Petitioner is detained under 8 U.S.C. § 1231 and that his detention is Constitutional. This Memorandum in reply follows.

II. ARGUMENT

A. Petitioner is not subject to mandatory detention under 1231 because the removal period has not begun.

Section 1226(a) of Title 8 of the United States Code (USC) provides, in part, that a noncitizen "may be" arrested and detained "pending a decision on whether the [noncitizen] is to be removed from the United States. It also allows the Attorney General to release a noncitizen on bond or conditional parole if they are not subject to mandatory detention based on criminal- or security-related grounds as described in U.S.C. § 1226(c).

Section 1225(b) provides that "arriving aliens" and "certain other aliens" who are detained within 100 miles of the U.S. border and within 14 days of entry into the United States shall be detained pending completion of removal proceedings. As relevant here, "certain other aliens" is defined by regulation to include noncitizens that were determined to have a credible fear of persecution and were transferred from expedited removal to "full" removal proceedings. *Singh v. Barr*, No. 1:19-CV-01096 EAW, 2020 WL 1064848, at *3 (W.D.N.Y. Mar. 2, 2020)

Section 1231(a)(2)(a) of Title 8 of the USC, however, states that the Attorney General "shall detain" the noncitizen *during the removal period*. In addition, it provides that the Attorney

General "shall remove" the noncitizen from the United States "with a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The removal period begins from the latest of the following:

> (i) The date the order of removal becomes administratively final.
> **(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.**
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B). (emphasis added)

In *Hechavarria v. Sessions*, Circuit Judge Pooler for the United States Court of Appeals, Second Circuit, held that the "unambiguous language" of 8 U.S.C. § 1231 "makes plain" that the noncitizen is not within the 'removal period' and is *not* detained for purposes of 8 U.S.C. § 1231 until the *latest* of the three above identified events.891 F.3d 49, 53 (2d Cir. 2018), as amended (May 22, 2018). "Section 1231 does not govern the detention of immigrants whose removal has been stayed pending judicial review. . . When a court of appeals issues a stay pending judicial review of an underlying removal order, the removal is not inevitable." *Id.* District Judge Pooler further acknowledged that **every federal circuit court that had considered the same issue at the time had found that U.S.C. § 1226 continues to govern in situations such as Petitioner's where the noncitizen is detained, but has a removal order that is being judicially reviewed** *Id.* at 57.

Other district court judges have agreed with this interpretation of 8 U.S.C. § 1231. Specifically, District Judge Talwani in the United States District Court for the District of Massachusetts found that with a Stay of Removal, the 'latest date' for the removal period is the issuance of a final order on the petition for review rendering section 1231 inapplicable to the petitioner. *Dondoni V. Moniz, et al.*, No. 1:25-CV-13438-IT, 2025 WL 3470501, at *3 (D. Mass.

Dec. 3, 2025) (by U.S. Imm). Further, Judge Saris in the United States District Court for the District of Massachusetts recognized that several United States Circuit Courts have held that "Section 1231 does not govern the detention of immigrants whose removal has been stayed pending judicial review" and agreed with the majority of the circuit courts and *Reid* that 8 U.S.C. § 1226 "continues to govern detention" where "a removal order has been stayed" pending judicial review. *Savino v. Souza*, No. CV 20-10259-PBS, 2020 WL 1808625, at *2 (D. Mass. Apr. 9, 2020) (citing *Hechavarria v. Sessions*, 891 F.3d 49, 56 (2d Cir. 2018); *Leslie v. Att'y Gen. of the U.S.*, 678 F.3d 265, 270 (3d Cir. 2012), *abrogated in part and on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057-58 (9th Cir. 2008); *Reid*, 64 F. Supp. 3d at 276-77; *but cf. Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.4 (11th Cir. 2002).

Further, in the Second Circuit, the filing of a motion for Stay of Removal invokes the forbearance agreement with the government. This agreement functionally stays the Petitioner's removal until a panel of the circuit denies the motion for stay or the petition for review. *See In re Immigration Petitioners for Review Pending in the U.S. Court of Appeals for the Second Circuit*, 702 F.3d 160, 162 (2d Cir. 2012) ("the Forbearance Policy"). This Forbearance causes a 'substantive impediment to the petitioner's deportation' meaning that his removal is "neither imminent nor certain so long as his petition for review is pending with the Second Circuit and the forbearance policy remains in effect." *See Rodriguez Sanchez v. Decker,* 431 F.Supp. 3d 310, 314 (S.D.N.Y. 2019). Further given the structure of §1231, which provides that the removal period

begins on the latest of three possible dates, courts have found that when a stay of removal is pending with a circuit court, it is not possible to conclude that the removal period has begun:

> as one cannot say when the "latest" of the three events will occur until those events have either taken place or it is known that they can no longer ever take place. Consequently, the time between an alien's filing of a petition for review and this court's issuance of a stay of removal falls within a lacuna in the statutory text. We consider it unlikely that Congress would have intended that DHS's removal efforts begin as soon as an alien's removal order is administratively final, terminate when this court stays removal, and begin anew if and when we finally deny the petition for review. *Brown v. Lanoie*, No. 13-CV-13211-IT, 2014 WL 12586735, at *3 (D. Mass. Aug. 4, 2014) (citing *Prieto-Romero v. Clark*, 534 F.3d 1053, 1060 (9th Cir. 2008).

Therefore, during the pendency of a motion for a stay of removal, the Petitioner's detention is governed by § 12226, not § 1231. *Id.*

Here, Petitioner filed a Petition for Review and Emergency Stay of Removal with the Second Circuit on December 2, 2025. As the Petitioner has filed a stay of removal with the Second Circuit, pursuant to the government's policy of forbearance in the Second Circuit, his removal is stayed while his petition and motion are pending before the Second Circuit. Because of the Stay of Removal and the Forbearance Policy, the 90-day removal period under 8 U.S.C. § 1231(a)(1)(A) has not begun. Therefore, as the removal period has not begun, 8 U.S.C. § 1231(a)(1)(A) does not apply to the Petitioner. Thus, Petitioner may only be detained under 8 U.S.C. § 1226.

As Respondents have offered no other justification for holding Mr. Ahmed without a custody review, the Petition may be granted solely on the basis that the removal period has not begun, and mandatory detention is not provided by statute. *Sanders v. Cnty. of Niagara*, No. 21-CV-6585-MAV-MJP, 2025 WL 611153, at *4 (W.D.N.Y. Feb. 26, 2025) (i]t is settled ... that

arguments raised for the first time in replying in further support of a motion are generally deemed waived.")

To the extent that Respondents' claim that Petition is subject to mandatory detention because he was initially released on parole by DHS rather than bond by the EOIR, that is unavailing. The recent case of *Gomes* v. *Hyde* in the District of Massachusetts is instructive. In *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, Mr. Gomes initially entered the United States without any authorization or inspection. He was subsequently encountered by a CBP officer and detained. He was released from detention on his own recognizance. Over a year later ICE arrested Gomes on a warrant. The EOIR found that he was subject to mandatory detention under 8 U.S.C. 1225(b)(2). He challenged this decision through a writ of habeas corpus. *Id*, at * 1-4. The court found that when he first entered the United States, the government had authority to detain him under 8 U.S.C. 1225(b)(2), which they did. However, the court noted that the government chose not to detain him pending completion of removal proceedings but rather to release him on his own recognizance. When he was arrested over a year later on a warrant that identified a different detention authority namely 8 U.S.C. §§ 1226 and 1357. The court found that the government could no longer "return" him to the custody status he was in prior to release under 8 U.S.C. 1225(b)(2). Rather the court found that he could only be detained under 8 USC 1226, and as such he was entitled to an individualized custody determination. *Id.* 5-7.

The *Gomes* Court distinguished a recent BIA case, *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025). That administrative decision concerned a noncitizen that was arrested shortly after crossing into the United States, she was initially detained under 8 U.S.C. 1225(b)(2) but was later paroled under the same provision as Mr. Ahmed, 8 U.S.C. § 1182(d)(5)(A). After she was released on parole, the government learned that Ms. Li was "wanted in Spain for travel document forgery

and human smuggling crimes." DHS served her with a Notice to Appear, a document that initiates removal proceedings and automatically terminates parole. 2025 WL 1869299 at 7-8. (citing 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)). The BIA held that Ms. Li was held under 8 U.S.C. 1225(b)(2) and did not have access to a bond hearing before an immigration judge. Judge Kobick found the facts of Mr. Gomes' case to be "totally different." There was no indication that Ms. Li was detained on a warrant, therefore, the only basis for her detention was the issuance of the NTA, and because she was detained by DHS prior to her grant of humanitarian parole, DHS was required to "return [her] to that status" pending the completion of removal proceedings. *Id.* at 7-8.

Here, Naseer's parole was never properly revoked, he was rather detained within the United States after having been present for many years. As the removal period has not begun, and he was not detained subject to his original parole being revoked, he can only be detained under the general provisions of 8 U.S.C. § 1226(a).

B. Respondents' Failed to Properly Terminate the Petitioner's Parole

When persons have been granted parole, the government must comply with regulatory and statutory requirements to terminate that parole.

> In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.

8 C.F.R. § 212.5(e)(2)(i). The recent case of *Rodriguez Martinez v. Raycraft, et al.,* in the Western District of Michigan is instructive. *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL

2496379, at *6 (E.D. Mich. Aug. 29, 2025) Mr. Rodrigues Martinez initially entered the United States in 2023. *Id.* At the time of his entry, DHS issued Mr. Rodrigues Martinez a Form I-862 NTA, charging him with inadmissibility for being "an immigrant not in possession of [valid immigration and travel documents]," and paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). *Id.* In 2025, Mr. Rodrigues Martinez's parole was terminated after the government issued a 'blanked termination of parole' to noncitizens throughout the country. *Id.* at 3. Mr. Rodrigues Martinez was subsequently detained by ICE without a warrant. *Id.* The court found that the purpose of Mr. Rodrigues Martinez's parole had not been accomplished to justify termination of his parole insofar that the circumstances of his country which brought Mr. Rodrigues Martinez to the United States had not changed and his immigration case was ongoing. *Id.* at 9. "If Respondents did not follow the applicable statutory and regulatory requirements to properly revoke Petitioner's previously granted parole, then they did not have the authority to arrest and detain Petitioner, 'unless there [wa]s some other valid reason to arrest him.'" *Id.* at 11. (Citing *Mata Velasquez*, 794 F. Supp. 3d at 145).

Here, the purpose of the Petitioner's parole has not been accomplished. He is still pursuing asylum through his petition for review in the Second Circuit Court of Appeals. Therefore, the purpose of granting parole for the duration of the Petitioner's immigration matter has not run its course. Neither humanitarian reasons nor public benefit warrant detention of the Petitioner when he was detained without cause, is the father to United States Citizens, and has lived peacefully in the United States as a positive member of his community since 2016. Further, there is no evidence that his re-detention was the result of an individualized and rational process to terminate his parole but rather appears to be the result of happenstance or a general policy of taking as many noncitizens into detention as possible. While Respondents are certainly entitled to change enforcement and

detention priorities, their own regulations, and baseline principles of reasoned decision making require them to disclose the actual reasons for his re-detention. See, See, e.g., Miriam Jordan, Green Card Interviews End in Handcuffs for Spouses of U.S. Citizens, *N.Y. Times* (Nov. 26, 2025), https://www.nytimes.com/2025/11/26/us/trump-green-card-interview-arrests.html; *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019) (noting that while courts are deferential to agency judgment, they are "not required to exhibit a naiveté from which ordinary citizens are free"). There is no evidence in the record of written notice of the actual reasons for the revocation of his parole, as required by 8 C.F.R. § 212.5(e)(2)(i). As such, Respondents clearly failed to follow the statutory requirements to terminate the Petitioner's parole.

C. Detention of the Petitioner is a Violation of his Due Process Rights

Because Petitioner was released by DHS on parole, his parole was never properly terminated, and he was re-detained only after a happenstance encounter with DHS agents, this case is more analogous to *Gomes* than to this Court decision in *Singh*. See, *Gomes*, 2025 WL 1869299 (finding that a noncitizen released on parole by DHS, was not subject to mandatory detention under 1225 (b) when he was re-arrested years later in the interior of the country on an administrative warrant under 1226 (a) cf., *Sing* 2020 WL 1064848 (petitioner that was detained after entry, found to have a credible fear of return, and was not released on parole by DHS was subject to detention under 1225 (b) but entitled to a bond hearing where the government bore the burden of proof). Here, unlike in *Singh*, Petitioner had been released from detention for many years and was re-detained inside the United States for reasons totally unrelated to the lawful termination of his parole. Nevertheless, even if this Court finds that Mr. Ahmed is subject to 1225 (b), the reasoning in *Singh*, compels at least the same outcome here, namely: procedural due process requires that Mr. Ahmed be afforded a bond hearing with strong procedural safeguards.

Detention of the Petitioner at this point is in clear violation of his due process rights. In *Velasco Lopez v Decker*, the Second Circuit held that due process imposes restrictions on the government's ability to detain noncitizens in removal proceedings. 978 F.3d 842 (2nd Cir. 2020) ("Our concern is, in the words of the Supreme Court, with the 'important constitutional limitations' on that power's exercise." (*citing Zadvydas v. Davis*, 533 U.S. 678, 695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).)). Mr. Velasco Lopez, a native of Mexico entered the United States without inspection in 2000 and was taken into immigration custody in 2018. *Id.* at 847. The parties did not dispute that he was detained under 1226(a). The issue in the case was whether the due process clause allowed his continued detention *after providing* a hearing at which he bore the burden of proof to demonstrate that he was not a danger to the community or posed a risk of flight from immigration court proceedings, *Id.* at 851. After analyzing the three *Matthews* factors, the Second Circuit found that due process requires the government to justify detention by proving that a noncitizen is a danger to the community by clear and convincing evidence, or a flight risk by a preponderance of the evidence. *Id.* at 851–57.

There is no colorable reason why this due process analysis allows the government to detain Mr. Ahmed without even an opportunity for him to carry the burden of proof regarding flight risk and danger. The interest of the government in the power to detain and those of Mr. Ahmed in being free from imprisonment are legally indistinguishable from those considered in *Velasco Lopez.*

Thus, the burden of proof is on the government to show that Mr. Ahmed poses a danger to the community or poses a flight risk. The private liberty interest is substantial; Mr. Ahmed was already released by DHS after vetting and payment of bond and was only re-detained because a military police officer identified him as an applicant for immigration relief in pending proceedings.

The risk of error is acute if bond is categorically denied based on the technical mechanism of his release untethered to any dangerousness or risk of flight finding. Further, the government's countervailing interests are comparatively slight where it has already completed security screening and allowed release, and where it may impose myriad other means to ensure his appearance at future proceedings. *Velasco Lopez's* balancing holding therefore does not permit detention of Mr. Ahmed without an individualized determination. In addition, *Velasco Lopez* recognized that even individuals who entered without inspection are entitled to a bond hearing with the proper allocation and quantum of proof. 978 F.3d at 849-57. Further, the risk of erroneous deprivation is arguably greater here than in *Singh*. Here, DHS already determined that it was safe to release Mr. Ahmed into the community and set appropriate conditions of release including a $10,000 bond. There is no allegation that he ever violated the terms of his release or otherwise posed a danger to the community or risk of flight from proceedings.

Because no other provision of detention applies and Petitioner's prior conditions of release were not lawfully terminated, the Court should order immediate release. At minimum, the Court should order an individualized bond hearing before an Immigration Judge ("IJ") at which:

1. The government bears the burden to prove that by clear and convincing evidence that Mr. Ahmed poses a danger to the community and that by a preponderance of the evidence Mr. Ahmed poses a flight risk;
2. The IJ must consider alternatives to detention and the least restrictive conditions that will reasonably assure appearance and community safety;
3. The IJ must consider Mr. Ahmed's ability to pay in setting any bond; and
4. The IJ to issue any written findings.

III. CONCLUSION

For the reasons set forth in the petition and herein, the Court should deny the Respondent's motion to dismiss, grant the Petition for Writ for Habeas Corpus, and order that Mr. Ahmed be released from custody. Alternatively, this Court should grant a conditional writ, declare that Respondents' have not met their burden of proving by a preponderance of the evidence that the Petitioner is a flight risk and order that the Department of Justice provide him a constitutionally adequate bond hearing within 7 days.

Dated this 12th day of December 2025,

Respectfully Submitted,
Naseer Ahmed,
By and through his counsel,

/s/ Carl Hurvich /s/

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CERTIFICATE OF SERVICE

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Dated: December 12, 2025

By: /s/ Carl Hurvich