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December 1, 2025

VIA ECF
Honorable Evelyn Padin
United States District Judge
Martin Luther King Building & U.S. Courthouse
50 Walnut Street Room 4015
Newark, NJ 07101

Re: Yuhui Chen v. Rokosky
Docket No.: 2:25-cv-17580-EP

Dear Judge Padin:

This office represents Petitioner in the above referenced matter. In light of the Government's November 26, 2025 letter response to the Petition for Writ of Habeas Corpus ("Petition"), Petitioner respectfully submits this letter brief in lieu of a formal reply brief.

The Government Does Not Dispute the Critical Facts

The Government does not dispute that Petitioner entered the United States in 2023 without having been paroled or admitted and that he was arrested by Immigration and Customs Enforcement ("ICE") on November 13, 2025. *See* ECF No. 3. The Government also does not dispute that Petitioner is being detained under 8 U.S.C. § 1225(b)(2) because of the Department of Homeland Security's ("DHS") July 8, 2025 policy change and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 215 (BIA 2025). This Court has addressed nearly identical facts in several other cases and concluded that habeas relief was warranted. *See Illescas v. Corey Chu*, No. 25cv17273 (EP), 2025 LX 581522, at *3 (D.N.J. Nov. 18, 2025); *da Silva v. LaForge*, No. 25cv17095 (EP), 2025 LX 549238, at *4 (D.N.J. Nov. 13, 2025); *Ramos v. Ericrokosky*, No. 25cv15892(EP), 2025 LX 465026, at *25 (D.N.J. Nov. 3, 2025); *Lomeu v. Soto*, No. 25cv16589 (EP), 2025 LX 428907, at *24 (D.N.J. Oct. 23, 2025).

Section 1225(b)(2) Does Not Apply to Petitioner

In order "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde,* 792 F. Supp. 3d 211 (D. Mass. 2025). Here, there was no examination by an immigration officer. Petitioner entered the United States without inspection. The issuance of the NTA is not an examination by an immigration officer, and the Government cannot present any legal authority to show otherwise. *See Zumba v. Bondi,* No. 25-cv-14626

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(KSH), 2025 LX 482036, at *24 (D.N.J. Sep. 26, 2025) (noting that this argument "is an awkward fit and unpersuasive" and that the government fails to "provide textual or legal support that the issuance of a NTA eight or so years after petitioner's entry into the United States substitutes for an inspection by an examining immigration officer at or near the border. Nor do they explain how petitioner was 'seeking admission' at the time the NTA was issued -- she was unquestionably present in the interior and had been for years -- so that phrase is rendered superfluous and violates the rule against surplusage.").

This Court has found that the Respondents "completely ignore the plain and longstanding distinction in U.S. immigration law between those noncitizens who are entering the country and those who remain after entering, focusing instead on the definitions of 'applicant for admission' and misreading a misreading of the statutory phrase 'seeking admission' to include the past-tense, an alien who already entered the country without inspection under § 1225." *Lomeu,* 2025 LX 428907, at *19. "The best statutory interpretation, consistent with the *Jennings* Court's discussion of the overall statutory scheme, is that § 1225(b)(2) governs 'applicants for admission at the border and mandates custody without bond while admissibility is determined' and § 1226(a) 'applies to noncitizens already present and allows for detention pending removal, with bond hearings before an immigration judge.'" *Id.* (internal citations omitted).

Section 1226(a) Applies to Petitioner

Section 1226(a) concerns all noncitizens without final orders of removal who are not subject to section 1225 or mandatory detention under section 1226(c). *See Benitez v. Francis*, 2025 LX 337407, *3 (S.D.N.Y. Aug. 8, 2025) (holding that § 1225 did not apply because the "plain text, overall structure, and uniform case law interpreting" the statutory provision compels the conclusion). "Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States." *Zumba*, 2025 LX 482036, at *26; *see also Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (citation modified) ("Whereas § 1225 governs removal proceedings for 'arriving aliens,' § 1226(a) serves as a catchall . . . § 1226(a) is the 'default rule' and 'applies to aliens already present in the United States' . . . inclusion of both provisions . . . is likely . . . a way for Congress to capture noncitizens who fall outside of the specified categories"); *Barrera v. Tindall*, No. 25-541, 2025 U.S. Dist. LEXIS 184356, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (holding the text of § 1225 is focused "on inspections for noncitizens when they arrive" and "suggest[s] that Section of 1225 is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States.").

Petitioner's Continued Detention Violates his Due Process Rights

The Supreme Court has held that "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment--from government custody, detention, or other forms of physical restraint--lies at

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the heart of the liberty that [the Due Process] Clause protects." *Id.* at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that due process "protects every [noncitizen] from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection") (internal citations omitted).

The adequacy of due process for civil detainees is generally guided by the three-part balancing test articulated in *Mathews*. This Court has agreed in similar cases that the misapplication of section 1225(b)(2) rises to the level of a deprivation of a petitioner's due process rights. *See Lomeu,* 2025 LX 428907, at *19; *Zumba*, 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *10 (holding the mandatory detention of a petitioner who lived in the United States for 20 years "is not authorized by [section 1225] serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief').

The Appropriate Remedy is Release From Detention

A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts have granted release from detention as opposed to ordering a bond hearing. *See Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured . . . . But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention. The Court finds that release from detention is the appropriate relief . . . ."); *Benitez*, 2025 LX 337407, *3 (S.D.N.Y. Aug. 8, 2025); Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release."). Petitioner respectfully submits that the nature of the constitutional violation of Petitioner's due process rights necessitates Petitioner's release from detention.

Alternatively, if the Court does not grant release, it should direct a bond hearing and explicitly place the burden of proving Petitioner's continued detention by clear and convincing evidence. Typically, "when a non-citizen is detained under § 1226(a), they may request a bond hearing before an IJ . . . . At a bond hearing under the statute, the non-citizen bears the burden of proving that he is neither a danger to the community nor a flight risk." *Sandhu v. Tsoukaris*, Civil Action No. 25-14607 (BRM), 2025 LX 524948, at *20-21 (D.N.J. Nov. 20, 2025). However, the Third Circuit has held in the section 1226(c) prolonged detention context that "when detention becomes unreasonable, the Due Process Clause demands a hearing, at which the Government bears the burden of proving that continued detention is necessary to fulfill the purposes of the detention statute." *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011). The Third Circuit later clarified that the burden is by clear and convincing evidence. *See Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020) ("We now hold that once detention under § 1226(c) has

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become unreasonable, the Government must put forth clear and convincing evidence that continued detention is necessary.").

On the section 1225/1226 issue, courts in the Third Circuit have either granted release or directed a bond hearing. However, the courts that have directed a bond hearing have not been uniform as to which party bears the burden of proof at a court directed bond hearing. Petitioner notes that several courts in the Third Circuit have relied on the holding of *German Santos* and placed the burden on the Government to prove that a noncitizen is a risk of flight or danger to the community by clear and convincing evidence. *See Ndiaye v. Jamison*, No. 25-6007, 2025 LX 503509, at *23 n.5 (E.D. Pa. Nov. 19, 2025) (granting petitioner release because a bond hearing would only serve to delay relief, but quoting *German Santos* and noting that '[i]n a 'bond hearing, the Government bears the burden of persuasion by clear and convincing evidence' to support a 'finding that continued detention is needed to prevent [the noncitizen] from fleeing or harming the community.'"); *C.B. v. Oddo*, Civil Action No. 3:25-cv-00263, 2025 LX 485662, at *20 (W.D. Pa. Oct. 22, 2025) (citing *German Santos* and ordering that "[a]t said bond hearing, the Government shall bear the burden to justify Petitioner's detention by clear and convincing evidence."). Other district courts across the country have similarly found that the burden should be on the Government based on the fact that the Government's misapplication of section 1225(b)(2) resulted in a violation of a petitioner's due process rights. *See, e.g., Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 LX 465474, at *16 (D.N.M. Sep. 17, 2025) (noting that the regulations normally place the burden on the petitioner but that "these are not normal circumstances. Here, the Court has determined that Petitioner has been unlawfully detained without due process in violation of his constitutional rights.").

Petitioner requested release from detention, or the in alternative a bond hearing at which the Government bears the burden of proving danger to the community or risk of flight by clear and convincing evidence due to the nature of the Government's violation of Petitioner's due process rights.

Thank you for the Court's consideration of this matter.

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Cc: U.S. Attorney's Office by ECF