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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

QIWEI WENG,

*Petitioner,*

**V.**

KENNETH GENALO, *et al.*

*Respondents.*

Docket No. 1:25-cv-09595-JHR

**REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS  
CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER**

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## INTRODUCTION

Petitioner respectfully submits this memorandum of law in reply to Respondents' ("Government") opposition to the Petition for Writ of Habeas Corpus ("Petition"). For the reasons set forth below, the Court should find that Petitioner is subject to discretionary detention under section 1226(a) and order Petitioner released from detention. First, Petitioner is clearly not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Numerous district courts (including many in this district) have found that section 1226(a) applies to noncitizens like Petitioner. Second, the Government's continued detention under section 1225(b)(2) violates his due process rights. The appropriate remedy for the Government's violation of Petitioner's constitutional rights is immediate release from detention, as many other courts have found to be appropriate.

## ARGUMENTS

### **I. THE GOVERNMENT CONCEDES IMPORTANT FACTS CONCERNING PETITIONER'S ENTRY INTO THE UNITED STATES AND RELEASE FROM CUSTODY**

The Government recitation of the procedural history confirms several crucial facts that support Petitioner's claim that he is subject to detention pursuant to section 1226(a). The Government does not dispute that Petitioner entered the United States without inspection or parole and acknowledges that he was issued a Notice to Appear ("NTA") that charged him with removability as a noncitizen present without being admitted or paroled. *See* ECF No. 8 ¶¶ 4, 5. The Government also acknowledges that Petitioner was arrested pursuant to Form I-200 Warrant for Arrest, which clearly stated that Petitioner was "being taken into custody as authorized by section 236 [8 U.S.C. 1226(a)] of the Immigration and Nationality Act." ECF No. 7-3.

Moreover, the Government acknowledges that Petitioner was “released on his own recognizance as a conditional parole pursuant to 8 U.S.C. § 1226(a)(2)(B).” *Id.* ¶ 6. The order of release specifically stated that Petitioner was being released “in accordance with section 236 [8 U.S.C. § 1226] of the [INA]” provided that Petitioner reports for any hearing or interview, does not change his place of residence without first securing written permission, does not violate any local, state, or federal law, and assists DHS in obtaining any necessary travel documents. *See* ECF No. 7-4. Furthermore, the Government does not dispute that Petitioner did not violate any terms of his release and that he was detained during a routine check-in.

These facts are important because, for the reasons set forth below, they demonstrate that Petitioner has always been subject to detention pursuant to section 1226(a), and that the Government voluntarily released him under this detention authority. Moreover, it demonstrates that the Government had no basis to revoke his release on conditional parole.

## **II. THE COURT SHOULD GRANT HABEAS RELIEF BECAUSE PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b)(2)**

The Government agrees that the crux of this matter comes down to whether Petitioner is detained under section 1226(a) or 1225(b)(2). For nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July 8, 2025, DHS radically changed its position regarding the statutory interpretation of these two statutes and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. Many courts in this district have already rejected the Government’s arguments that section 1225(b)(2) applies. *See, e.g., Perez v. Francis*, No. 25-cv-8112 (JGK), 2025 LX 444333

(S.D.N.Y. Nov. 6, 2025); *Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 LX 454401 (S.D.N.Y. Nov. 4, 2025); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 LX 418983 (S.D.N.Y. Oct. 28, 2025); *Gonzalez v. Joyce*, 2025 LX 455936 (S.D.N.Y. Oct. 19, 2025); *Samb v. Joyce*, 2025 LX 386316 (S.D.N.Y. Aug. 19, 2025); *Benitez v. Francis*, 2025 LX 337407 (S.D.N.Y. Aug. 8, 2025). The Court should join the chorus of cases from this district and across the country for the following reasons.

*A. 8 U.S.C. § 1225(b)(2) Does Not Concern Noncitizens like Petitioner*

The Government’s position is that every noncitizen is an applicant for admission subject to mandatory detention, except for those who were admitted. However, “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*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at \*6 (D. Mass. July 24, 2025). The Government makes no distinction between an applicant for admission and “seeking admission.” *See id.* at \*11 (noting that the Government is “apparently treating it as mere surplusage of the ‘applicant’ requirement.”). The phrase “seeking admission” is undefined but “necessarily implies some sort of present-tense action.” *Id.* Here, there is no present action. “To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious. For instance, someone who has just crossed the border may technically be ‘in’ the country but is still treated as ‘an alien seeking initial entry.’” *Benitez*, 2025 LX 337407, at \*10; *Huamani*, 2025 LX 454401, at \*9. So therefore, it is important to look to how Petitioner was treated upon entry in the United States. As the Government concedes, Petitioner entered the United States on or about November 9, 2024 and was briefly detained pursuant to I-200 Warrant

for Arrest for one day, and then released on his own recognizance pursuant to section 1226(a)(2)(B) after being served with a Notice to Appear (“NTA”). The NTA itself designated Petitioner as “an alien present in the United States who has not been admitted or paroled.” Therefore, “it is indisputable that Respondents have consistently treated [Petitioner] as subject to § 1226.” *Benitez*, 2025 LX 337407, at \*13. “These facts, taken together, can support only one conclusion—that [Petitioner] was not mandatorily detained as a noncitizen ‘seeking admission’ under § 1225(b), but rather as someone ‘already in the country,’ *Jennings*, 583 U.S. at 288-89, pursuant to Respondents’ discretionary authority under § 1226(a) . . . .” *Id.* Therefore, “[i]t is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute ‘seeking admission.’” *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at \*37 (D. Nev. Sep. 17, 2025). There was also no examination by an immigration officer, as required by the statute. The Government’s opposition makes no meaningful attempt to address this requirement.<sup>1</sup>

The Court should consider “whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute “cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012). Here, the context is clear that “detention authority in § 1225 is exercised at or

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<sup>1</sup> The issuance of the NTA is not an examination by an immigration officer. *See Zumba v. Bondi*, No. 25-cv-14626 (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 for this contention”).

near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States.” *Zumba*, 2025 LX 482036, at \*19. Indeed, “[t]he line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’” *Martinez*, 2025 LX 284582, at \*18.

In other words, the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to enter, or who have recently entered the U.S. It does not include noncitizens “who entered long ago, are not taking affirmative steps that could be characterized as ‘seeking admission,’ and have been residing in the U.S. for years.” *Vazquez*, 2025 LX 460110, at \*39. This is also further supported by the very title of section 1225. “The titles and headings of § 1225 repeatedly cabin its application to ‘Inspections,’ which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border.” *Zumba*, 2025 LX 482036, at \*23.

*B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner*

Section 1226(a) applies to all noncitizens without final orders of removal who are not subject to section 1225. *See Benitez*, 2025 LX 337407, \*3. “As almost every district court to consider this issue has concluded, ‘the statutory text, the statute’s history, Congress’ intent, and § 1226(a)’s application for the past three decades’ support finding that § 1226 applies to these circumstances.” *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at \*6 (S.D. Tex. Oct. 7, 2025).

For the above reasons, the Court should find that the statutory framework supports Petitioner’s reading of the statutory framework. However, even if the Court were to consider

Congressional intent, the legislative history clearly supports Petitioner's reading. As the court in *dos Santos* summarized:

The plain text of Section 1226(a)—which provides that, following a noncitizen's arrest on a warrant, the Attorney General "may" detain the noncitizen, "may" release him on bond, or "may" release him on conditional parole, 8 U.S.C. §§ 1226(a)(1)-(2)—indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant . . . . And while Section 1226(a) expressly carves out certain "criminal" noncitizens from its discretionary framework, it does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2). *See* 8 U.S.C. § 1226(a) ("Except as provided in subsection (c) ..., the Attorney General ... may" (emphases added)). "That express exception" to Section 1226(a)'s discretionary framework "implies that there are no other circumstances under which" detention is mandated for noncitizens, like [Petitioner], who are subject to Section 1226(a).

*dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488 \*17, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

The 2024 Laken Riley Act amendment to section 1226(c) further supports Petitioner's arguments. As another court succinctly put it:

If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework. The Laken Riley Act added a subsection to Section 1226 that specifically mandated detention for noncitizens who are inadmissible under Sections 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like [petitioner]), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Respondents' interpretation of the statutes would render this recently amended section superfluous.

*Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at \*21-22 (E.D. Mich. Aug. 29, 2025).

If section "1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Id.* (quoting *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 237441, \*12 (D. Minn. Aug. 15, 2025)). The Government fails to mention the Laken Riley Act

and instead claims that Congress intended to deprive noncitizens like Petitioner of a bond hearing. But that is not accurate. As one court recently observed, “[w]hen the Department of Justice issued implementing regulations months after passage of IIRIRA, the agency explained that ‘[d]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.’ Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).” *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 LX 461679, at \*21-22 (D. Mass. Oct. 3, 2025). The Government also suggests that the Court should adopt the holding in BIA’s decision in *Matter of Yajure Hurtado*. The reasoning of the BIA’s decision is flawed for the same reasons that the Government’s arguments are flawed. Moreover, the BIA’s decision is not binding on this Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (noting that it is the province of the courts — not the agency — to “authoritatively interpret” the statute.).

*C. The Government’s Unlawful Detention of Petitioner Under Section 1225(b)(2) Violates Peittioner’s Fifth Amendment Rights*

The Fifth Amendment’s Due Process Clause prevents the Government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As a court in this district has recognized, “[i]t is well established that such protection extends to noncitizens, including those who are in removal proceedings.” *Benitez*, 2025 LX 337407, at \*26. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test here, the Court should conclude that Petitioner’s detention violates due process. Petitioner invokes “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Petitioner

"does not contend that greater judicial-type procedures must be imposed upon the administrative actions of ICE than those already required by law; [rather, he] argues that the agency must comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process." *Chipantiza-Sisalema v. Francis*, 2025 LX 295593, at \*3 (S.D.N.Y. July 13, 2025). Here, "the regulations implementing § 1226(a) delegate to DHS officers the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make an individualized determination as to the appropriateness of detention based on two factors—whether the noncitizen is a 'danger to property or persons' and is 'likely to appear for any future proceeding.'" *Benitez*, 2025 LX 337407, at \*28 (citing 8 C.F.R. § 1236.1(c)(8)). ICE released Petitioner on his own recognizance pursuant to section 1226(a), but Petitioner has had "no individualized determination as to factors such as his flight risk or dangerousness occurred before ICE arrested him." *Id.* \*31. As the court in *Benetiz* found, "[a]t a minimum . . . § 1226(a) requires a valid exercise of DHS's discretion. And here, there is nothing to suggest that DHS exercised any discretion at all in detaining" Petitioner. *Id.* at \*33. *Valdez v. Joyce*, 2025 LX 119339, at \*9 (S.D.N.Y. June 18, 2025) (noting that "[i]t is an abuse of process. In the context of revocation of civil release, 'an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.'").

Petitioner also satisfies the second prong of the *Mathews v. Eldridge* balancing test because the risk of erroneous deprivation is very high. The Government first released Petitioner pursuant to section 1226(a) and have failed to articulate any change in circumstances between his release and re-detention that makes him now a flight risk or danger to the community. *See id.* at \*35. The evidence instead makes it clear that Petitioner is not a danger to the community or a

risk of flight. Finally, the Government's interest does not outweigh the harm to Petitioner. The Government has not presented any arguments to suggest that Petitioner's detention is necessary particularly after the fact that ICE previously released Petitioner finding that he is not a danger to the community or a risk of flight.

*D. Exhaustion of Administrative Remedies is Not Required and Would Be Futile*

The Government contends that Petitioner should be required to exhaust administrative remedies. However, the Government does not dispute that the BIA's published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is binding on all immigration judges and forecloses bond at the administrative level. Therefore, filing a bond request before an IJ would be completely futile and only result in more time that Petitioner spends in detention before he can obtain habeas relief before this court. *See Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at \*5 (S.D. Tex. Oct. 7, 2025) ("exhaustion does not bar this court's review because it is not a statutory requirement in these circumstances."). When a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at \*3 (E.D. Mich. Sept. 9, 2025). This Court should adopt the same finding on this issue, just like the court did in *Huamani*. *See Huamani*, 2025 LX 454401, at \*21.

### **III. THE COURT SHOULD ORDER PETITIONER RELEASED FROM DETENTION**

The Government suggest that if the Court finds that section 1226(a) applies, the Court should order that an Immigration Judge ("IJ") hold a bond hearing. The Government is wrong and Petitioner urges that the Court grant immediate release from detention for the following reasons. A habeas court has "the power to order the conditional release of an individual

unlawfully detained.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). As the Court in *Huamani* noted, “the Government’s violation of Petitioner’s constitutional rights originated with her detention in the first instance.” *Huamani*, 2025 LX 454401, at \*20. “[T]he traditional function of the writ is to secure release from illegal custody”; it is the “usual remedy by which a man is restored again to his liberty, if he ha[s] been against law deprived of it.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). This Court should join the number of courts in this district that have granted immediate release as the appropriate relief. *See Huamani*, 2025 LX 454401, at \*25 (noting that Petitioner is “entitled to release” because “[s]he argues that her detention was illegal from the start because of the lack of any due process. Respondents do not argue that Petitioner was afforded any sort of process before her re-detention.”); *Benitez*, 2025 LX 337407, at \*45 (S.D.N.Y. Aug. 8, 2025); *Perez v. Francis*, No. 25-cv-8112 (JGK), 2025 LX 444333, at \*10 (S.D.N.Y. Nov. 6, 2025); *Samb v. Joyce*, 2025 LX 386316, at \*9 (S.D.N.Y. Aug. 19, 2025); *Valdez v. Joyce*, 2025 LX 119339, at \*9 (S.D.N.Y. June 18, 2025).<sup>2</sup>

Additionally, as held in *Benitez*, when ICE detains a noncitizen “without first conducting any individualized assessment as to dangerousness or flight risk,” the constitutional violation “originates with the detention in the first instance,” and “any post-deprivation review...is no substitute” for the process that was required before ICE seized the individual. *Benitez*, 2025 LX 337407, at \*27. ICE’s failure to make an initial custody determination means that “there is no ‘initial decision’ for [Petitioner] to appeal,” rendering a bond hearing legally inadequate. *Id.* The

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<sup>2</sup> Alternatively, if the Court were to hold that the appropriate remedy is a bond hearing, Petitioner respectfully requests that the burden be shifted to the Government to demonstrate that Petitioner is a danger to the community or a risk of flight due to Government’s unlawful violations of the INA and Petitioner’s constitutional right. *See Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (granting petitioner’s “request to shift the burden of proof in said bond hearing. Respondents shall bear the burden of justifying, by clear and convincing evidence, Petitioner’s continued detention.”)

Court in *Benitez* ordered immediate release for this reason, and the same remedy is warranted here, where Petitioner's re-detention occurred without notice, and with no finding of changed circumstances or any semblance of an individualized assessment.

### **CONCLUSION**

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on 22nd day of November 2025

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Dated: November 22, 2025

**CERTIFICATE OF SERVICE**

On November 23, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of New York, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Enes Hajdarpasic  
Enes Hajdarpasic

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Civil Rule 7.1(c), and the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,359 words.

/s/ Enes Hajdarpasic  
Enes Hajdarpasic