UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MACKSUEL ALVES DA SILVA *Petitioner,* v. PAMELA BONDI, *in his official capacity as Attorney General Of The United States;* KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* THOMAS BROPHY, *in his official capacity as Field Office Director, Ice Buffalo Field Office;* Warden of Buffalo Federal Detention Facility (Batavia, NY) *Respondents.*	**Case No.: 1:25-cv-01220-LJV.**

NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioner Macksuel Alves da Silva, through undersigned counsel, respectfully submits this Notice of Supplemental Authority in response to the Court's request during oral argument for legal authority addressing the statutory distinction between noncitizens properly classified as "arriving aliens" subject to detention under 8 U.S.C. § 1225 and noncitizens who are present in the United States and therefore subject to detention, if at all, under 8 U.S.C. § 1226.

This submission focuses on authority confirming that a noncitizen who entered the United States between ports of entry, was apprehended inside U.S. territory, and was charged by DHS as

an alien present without admission or parole is not an arriving alien as a matter of law, regardless of the government's later reliance on expedited removal or credible fear procedures. As the record in this case demonstrates, Mr. Alves da Silva was never encountered at a port of entry, never sought admission, and was expressly classified by DHS in the Notice to Appear as an alien present in the United States without admission or parole.

The supplemental authorities cited herein further establish that where a noncitizen was released from custody following a credible fear determination, the only lawful basis for that release is parole, and that once parole is granted, detention authority may not be derived from § 1225, which governs border inspection and admission. Instead, detention must proceed, if at all, under § 1226, consistent with the statutory framework and controlling district court authority, including decisions of this Court.

I. LEGAL PRINCIPLE SUPPORTED BY SUPPLEMENTAL AUTHORITY

The supplemental authorities cited below uniformly support the following legal principle: detention under 8 U.S.C. § 1225 is limited to noncitizens who are properly classified as "arriving aliens" and who are seeking admission at a port of entry or its functional equivalent. Where a noncitizen entered the United States between ports of entry, was apprehended inside U.S. territory, and was charged by DHS as an alien present without admission or parole, detention authority under § 1225 does not apply as a matter of law. In such circumstances, detention may proceed, if at all, only under INA § 236 (8 U.S.C. § 1226).

The cited authorities further establish that where DHS initiates expedited removal and credible fear procedures but subsequently releases the noncitizen from custody, the only lawful basis for that release is parole. Once parole is granted, the noncitizen is no longer subject to the border-detention framework of § 1225. DHS may not later revive § 1225 detention based on

historical processing steps after the individual has been released into the United States and treated as an interior noncitizen.

This principle applies squarely to Petitioner. Mr. Alves da Silva was never encountered at a port of entry and never sought admission. DHS apprehended him inside the United States and, in the Notice to Appear, expressly charged him as "an alien present in the United States who has not been admitted or paroled." Although DHS initially initiated expedited removal and referred Petitioner for a credible fear interview, DHS determined that Petitioner had a credible fear of return and released him from custody on parole. DHS never executed the expedited removal order.

DHS thereafter treated Petitioner as an interior noncitizen, issuing a Notice to Appear, litigating his case before the Immigration Court, and allowing those proceedings to be adjudicated and ultimately dismissed in 2022. When DHS re-arrested Petitioner in the interior of the United States in 2025—nearly nine years after his entry—he was not seeking admission, was not subject to inspection or screening under § 1225, and could not lawfully be treated as an arriving alien. Under these circumstances, the governing detention authority is § 1226, not § 1225.

II. CONTROLLING DISTRICT COURT AUTHORITY CONFIRMS THAT DHS MAY NOT TREAT PETITIONER AS AN "ARRIVING ALIEN" OR DETAIN HIM UNDER § 1225

District courts, including this Court, have made clear that detention under 8 U.S.C. § 1225 is strictly limited to noncitizens who are actually seeking admission at the border. Where a noncitizen has entered the United States between ports of entry, has been apprehended inside U.S. territory, and has been released from custody following a credible fear determination, DHS may not later invoke § 1225 to justify detention.

In *Cabrera Martinez v. Newman*, No. 25-cv-1110, Docket Item 24 (W.D.N.Y. Dec. 31, 2025), this Court held that noncitizens who remain in the United States following parole are detained, if at all, under 8 U.S.C. § 1226, not § 1225. The Court explained that § 1225 governs border inspection and admission and does not extend to post-entry detention once DHS has released the noncitizen into the United States. The Court further recognized that detention authority must be assessed based on the noncitizen's actual posture at the time of arrest, not on historical border-processing steps.

This Court reached the same conclusion in *Alvarez Ortiz v. Freden*, where it rejected DHS's attempt to rely on § 1225 after issuing charging documents reflecting post-entry presence and treating the petitioner as an interior noncitizen. The Court explained that DHS may not collapse the statutory distinction between border processing and interior enforcement by recharacterizing a noncitizen as an arriving alien long after entry has occurred.

Other district courts have applied this same reasoning in materially indistinguishable circumstances. In *Jose Alexander Infante Rodriguez et al. v. Kevin Raycraft et al.*, No. 1:25-cv-1560 (W.D. Mich. Dec. 18, 2025), the court held that DHS could not detain petitioners under § 1225 after granting parole following credible fear determinations and issuing Notices to Appear charging post-entry presence. The court emphasized that parole terminates the applicability of § 1225, and that detention thereafter must be analyzed under § 1226.

These decisions reflect a consistent rule: § 1225 cannot be revived after DHS releases a noncitizen into the United States and classifies that individual as present without admission or parole. DHS's reliance on earlier expedited removal or credible fear procedures does not alter the statutory analysis.

Here, as in *Cabrera Martinez*, *Alvarez Ortiz*, and *Infante Rodriguez*, DHS never charged Petitioner as an arriving alien, released him on parole following a credible fear determination, and later arrested him in the interior of the United States. Under controlling district court authority, detention in these circumstances cannot lawfully proceed under § 1225 and must instead be governed by § 1226, with all attendant procedural protections.

III. APPLICATION TO PETITIONER'S CASE

The facts of Petitioner's case fall squarely within the rule articulated by this Court and the supplemental authorities cited above. At no point was Petitioner properly classified as an "arriving alien," and DHS therefore lacks any lawful basis to detain him under 8 U.S.C. § 1225.

Petitioner did not enter the United States through a port of entry and did not present himself for inspection. Instead, he entered between ports of entry and was apprehended inside U.S. territory. DHS's own Notice to Appear reflects this fact by charging Petitioner as "an alien present in the United States who has not been admitted or paroled," rather than as an arriving alien. That charging decision is dispositive. Under the statute and regulations, an individual who has already effected entry and is present in the United States is not an arriving alien and is not subject to detention under § 1225.

Although DHS initially initiated expedited removal and referred Petitioner for a credible fear interview, DHS determined that Petitioner had a credible fear of persecution and released him from custody. The only lawful mechanism by which DHS could have released Petitioner following a credible fear determination was parole. As this Court explained in *Cabrera Martinez v. Newman*, once DHS paroles a noncitizen into the United States, § 1225—which governs border inspection and admission—no longer applies.

Consistent with that principle, DHS never executed the expedited removal order issued in 2016 and never treated Petitioner as subject to mandatory detention at the border. Instead, DHS released him into the United States and charged him as a noncitizen present without admission or parole. As the court held in *Jose Alexander Infante Rodriguez et al. v. Kevin Raycraft et al.*, parole following a credible fear determination forecloses reliance on § 1225 and requires detention, if any, to be analyzed under § 1226.

Years later, in November 2025, DHS re-arrested Petitioner in the interior of the United States, nearly nine years after his entry. At the time of re-arrest, Petitioner was not seeking admission, was not subject to inspection or screening, and was not at or near a port of entry. Under *Cabrera Martinez*, *Alvarez Ortiz v. Freden*, and *Infante Rodriguez*, DHS may not revive § 1225 detention based on historical border processing once a noncitizen has been released on parole and treated as an interior resident.

Accordingly, DHS's current attempt to characterize Petitioner as an arriving alien subject to § 1225(b) detention contradicts DHS's own charging documents, the statutory definition of "arriving alien," and controlling district court authority. Because Petitioner was apprehended inside the United States, released on parole, and never classified as an arriving alien, detention in this case may proceed, if at all, only under 8 U.S.C. § 1226, with all attendant statutory and constitutional protections, including entitlement to an individualized bond hearing.

IV. CONCLUSION

The record and controlling authority establish that Petitioner was never an "arriving alien" and therefore may not be detained under 8 U.S.C. § 1225. Petitioner entered the United States between ports of entry, was apprehended inside U.S. territory, and was charged by DHS as an alien present in the United States without admission or parole. After DHS determined that Petitioner had

a credible fear of return, it released him on parole and never executed the expedited removal order. Under these circumstances, § 1225—which governs border inspection and admission—does not apply.

As this Court held in *Cabrera Martinez v. Newman* and *Alvarez Ortiz v. Freden*, and as further confirmed in *Jose Alexander Infante Rodriguez et al. v. Kevin Raycraft et al.*, DHS may not revive § 1225 detention after releasing a noncitizen into the United States on parole and treating that individual as present in the interior. Detention authority in such cases arises, if at all, under 8 U.S.C. § 1226.

Because DHS lacked authority to detain Petitioner under § 1225, Petitioner is entitled to the protections afforded by § 1226, including an individualized bond hearing at which the government bears the burden of justifying continued detention. The Court should therefore order such relief as is appropriate and just.

Respectfully submitted this 5th day of January, 2026.

Clarissa Moraes Kalil, Esq.
The Law Office of Clarissa M. Kalil
129 Concord St, Suite 1
Framingham, MA 01702
Tel: (857) 218-0400
MO Bar# 71440
MA Bar# 714777
Counsel for Petitioner
(Pro hac vice admission)

AND

/s/ Joshua Elliot Bardavid, Esq.
Bardavid Law
277 Broadway, Suite 1501
New York, New York, 10007
Email: josh@bardavidlaw.com
Phone: (212) 219-3244
NY Bar #4129227
Local Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on **January 5th, 2026**, I electronically filed the foregoing **Notice of Supplemental Authority** with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notice of this filing to all counsel of record, including counsel for Respondents.

Respectfully submitted

Clarissa Moraes Kalil, Esq.
The Law Office of Clarissa M. Kalil
129 Concord St, Suite 1
Framingham, MA 01702
Tel: (857) 218-0400
MO Bar# 71440
MA Bar# 714777
Counsel for Petitioner
(Pro hac vice admission pending)

AND

/s/ Joshua Elliot Bardavid, Esq.
Bardavid Law
277 Broadway, Suite 1501
New York, New York, 10007
Email: josh@bardavidlaw.com
Phone: (212) 219-3244
NY Bar #4129227
Local Counsel for Petitioner