

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

YOHANDRY JOSE CASTRO CONEO,

Petitioner,

-v-

JUDITH ALMODOVAR, New York Field Office
Director, U.S. Immigration and Customs
Enforcement, et al.,

Respondents.

No. 25 Civ. 9850 (NSR)

**PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM OF LAW IN
OPPOSITION**

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PRELIMINARY STATEMENT

Respondents' opposition rests on an expansive and unprecedented theory of mandatory detention: that any noncitizen who was ever processed through expedited removal and received a credible fear interview may be treated, years later and deep inside the United States, as perpetually subject to mandatory detention under 8 U.S.C. § 1225(b), without bond, without an individualized determination, and without meaningful judicial review. That theory has been repeatedly rejected by courts in this Circuit and elsewhere. Petitioner is not a noncitizen apprehended at the border or held briefly pending inspection. He is a person who has been physically present in the United States, living here, complying with government directives, and pursuing protection through the immigration system. Courts confronting materially indistinguishable facts—including individuals initially placed in expedited removal, granted parole, living in the community for years, and later re-detained by ICE—have held that mandatory detention under § 1225 does not apply, or, at a minimum, that due process requires release. Petitioner's detention is unlawful and he should be released.

ARGUMENT

I. Regardless of Whether § 1225(b)(1) or (b)(2) Applies, Detention is Unlawful

In the Petition, Petitioner addressed mandatory detention under 8 U.S.C. § 1225(b)(2)(A), the provision most commonly invoked by the government to justify detention of noncitizens placed into removal proceedings without bond. In their opposition, Respondents assert that Petitioner is instead detained under 8 U.S.C. § 1225(b)(1)(B)(ii), because placed in expedited removal proceedings and received a credible fear interview. At the time Petitioner's counsel filed the Petition, counsel was not aware that Petitioner had an expedited removal order and that he had a credible fear hearing. After reviewing Respondents' exhibits attached to Respondents' Return to Habeas Petition, Petitioner does not contest that *upon entry* he was detained initially

under § 1225(b)(1)(B)(ii). *See* ECF No. 16-2. That distinction does not alter the statutory or constitutional analysis and does not require amendment of the Petition.

First, both § 1225(b)(2)(A) and § 1225(b)(1)(B)(ii) impose mandatory detention without an individualized custody determination. The core claim advanced in the Petition—applies with equal force regardless of which subsection § 1225 Respondents now invoke. Courts assessing detention under § 1225(b)(1)(B)(ii) have applied the same constitutional framework and reached the same conclusion: prolonged detention without access to a neutral decisionmaker violates the Fifth Amendment.

Second, courts have rejected the notion that this provision authorizes prolonged or years-later interior detention of individuals who have been released into the community and are pursuing protection in removal proceedings and have expressly assumed applicability of detention under § 1225 and nonetheless held that due process applies. Respondents’ reliance on § 1225(b)(1)(B)(ii) does not cure the constitutional defect identified in the Petition.

Third, as to Petitioner’s recent detention, Respondents’ reliance on § 1225(b)(1)(B)(ii) is contradicted by DHS’s own contemporaneous custody determinations and those made at his initial entry. First, the I-286 Notice of Custody Determination, ECF. No. 16-5, indicates that Petitioner was release “[o]n [his] own recognizance” “[p]ursuant to the authority contained in section 236 [8 U.S.C. § 1226] of the Immigration and Nationality Act.” As discussed herein, § 1226, as relevant here, is the discretionary detention statute, in contrast to § 1225. By this same document and Respondent’s Opposition, respondent was released on “conditional parole.” *See id.*; *and see* Opp. at 4. However, if Petitioner was in fact detained under § 1225(b), the only mechanism in which he could have been released was under humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Not on his own recognizance

or conditional parole. As an arriving alien under § 1225(b)(1), Petitioner’s Notice to Appear should so designate. ECF No. 16-6. It does not and states that he is “an alien present ... who has not been admitted or paroled.” *Id.* And, finally, the document Respondent’s used to arrest Petitioner, Form I-200 dated November 11, 2025, indicates that his arrest is authorized “pursuant to sections [1226 and 1357].” ECF No. 16-11. Again, Respondents reference section 1226 – the discretionary detention authority. Importantly to arrest a noncitizen subject to mandatory detention under § 1225, no warrant is required. *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJ), 2025 WL 3314420 at * 24-25. (E.D.N.Y. Nov. 28, 2025) (noting that an I-200 warrant is the statutory mechanism for interior arrests subject to § 1226(a)’s discretionary framework that if DHS were truly relying on § 1225(b)’s mandatory detention authority, there would have been no need to obtain a § 1226(a) warrant); *see Campbell v. Almodovar*, 2025 WL 3538351 at *9 (S.D.N.Y. December 10, 2025) (noting same and that the presence of an I-200 warrant was one fact determining that Petitioner was detained under § 1226(a), not § 1225).

Respondents arrest of Petitioner years after his entry pursuant to an I-200 warrant expressly citing section § 1226 and a Notice of Custody Determination under § 1226, is irreconcilable with any claim that Petitioner was continuously subject to mandatory detention under § 1225(b)(1)(B)(ii). Respondents may not retroactively recharacterize the basis for detention through post hoc litigation arguments.

II. Petitioner’s Detention Cannot Be Justified as Mandatory Detention Under § 1225

Section 1225 is a border-processing statute, not a mechanism for prolonged interior detention. The INA draws a sharp distinction between noncitizens “arriving” at the threshold of entry in United States and those who are already physically present in the country. Section 1225

governs inspection and initial processing at or near the border. Section 1226 governs detention of noncitizens who are present in the United States. Congress “authorizes the [g]overnment to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b) (2). It also authorizes the [g]overnment to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Respondents’ interpretation erases this distinction. Under their theory, § 1225 becomes a permanent detention regime that follows a person indefinitely, regardless of how long they have lived in the United States or how deeply embedded they are in the community. In § 1225(b)(1), “[t]he use of “arriving to describe noncitizens strongly indicates that the statute governs the entrance of noncitizens to the United States. This reading is bolstered by the fact that § 1225 clearly establishes an inspection scheme for when to let noncitizens into the country.” *Salgado Bustos v. Raycraft*, No. 25-cv-13202, 2025 WL 3022294 at *5 (E.D. Mich. Oct. 29, 2025) (citations removed). Virtually no court considering this question has held that § 1225 can authorize the permanent and mandatory detention for a noncitizen once released following the initial border encounter.

Despite his initial release, Respondents claim that Petitioner’s “status as an applicant for admission has remained unchanged” and he is “treated for constitutional purposes as if stopped at the border. Opp. at 8. And that Petitioner is only due whatever “procedure authorized by Congress,” *id.*, i.e. no due process and mandatory detention. However, this reading does not comport with the statute or the Fifth Amendment.

The issue here is whether the government can, after paroling an arriving noncitizen into the country, subject that individual to mandatory detention years later. The government contends

it can and that Petitioner has no due process right to challenge his detention because a line of cases, led by the Supreme Court's decisions in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 516 (2020) and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). Respondents read these decisions to treat Petitioner as being on the threshold of entry and forever an applicant for admission, and, thus, not subject to due process protections. *See Mezei*, 345 U.S. at 212 (“[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”). These cases are inapposite to Petitioner who has not been denied entry and has established significant connections to the United States during his more than one year of presence within the country.

In *Al-Thuraya*, the petitioner was subject to expedited removal under 8 U.S.C. § 1225(b)(1), provided a credible fear interview, and then paroled from detention and lived freely in the community. *Al-Thuraya v. Warden, Orange Cnty. Corr. Facility*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025). Holding that the entry fiction did not apply, the court contrasted *Mezei* and *Thuraissigiam* with the petitioner by noting that *Mezei* and *Thuraissigiam* were “conclusively denied entry” in contrast to the petitioner who has “pending claims to stay here, and [is] not seeking review—directly or indirectly—of any decision to exclude them. *Id.* at *5. If Petitioner is seeking anything, it “is not ‘admission’ or ‘lawful entry’ to the United States, but to obtain a lawful means to remain here.” *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 488 (S.D.N.Y. Aug. 13, 2025).

In *Tenemasa-Lema*, the court confronted an argument materially identical to the government's position here—that a noncitizen subject to expedited removal, whose parole expired could be treated as though he were physically at the border for due-process purposes and subjected to mandatory detention under § 1225(b) without any procedural protections.

Tenemasa-Lema v. Hyde, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025). The court rejected this argument, explaining that while the entry fiction may govern the statutory framework for admission, it does not control the constitutional analysis for physical detention imposed inside the United States. *Id.* The court held “that constitutional due-process protections regarding detention flow simply as a matter of ‘geographic’ presence within the United States” *Id.* (citing *Velasques Rincon*, No. CV 25-12633-BEM, 2025 WL 3122784, at *5–7, quoting *Zadvydas*, 533 U.S. at 693. The court held that Petitioner was entitled to more due process than the statute afforded, citing his family and community ties. *Id.*¹ Years of government-authorized presence and ties to the United States gave rise to a constitutionally protected liberty interest and applied the test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) and granted the release. *Id.*

Velasques Rincon reached the same conclusion. *Velasques Rincon v. Hyde*, 2025 WL 3122784, at *1. The petitioner had lived in the United States for nearly four years and was pursuing his asylum claim when ICE re-detained him mandatorily under § 1225(b)(1). *Id.* at *2. Despite the entry fiction doctrine, the court held due process applied because of his years of presence and the liberty interest that created in contrast to the mere 25 yards of entry accomplished by the petitioner in *Thuraissigiam*. *Id.* at *5-6. The court noted that “the Supreme Court has never applied the entry fiction doctrine to a case like this—to constitutionally justify the detention of a person living freely, for years, within the United States—and its expansion here cannot be justified.” *Id.* at *2. The court contrasted that the entry fiction preserves the “sovereign prerogative of governing admission to this country,” *id.* at *7 (quoting *Thuraissigiam*,

¹ *Tenemasa-Lema*, 2025 WL 3280555, at *4 (“even without disturbing the metaphysical “entry fiction” that may obstruct, in some senses, our ability to admit that a non-citizen is really “here,” one can still constitutionally recognize Petitioner’s actual life in this country—his years as part of our community—not so easily set aside.”).

591 U.S. at 140), by contrasting with the petitioner who has been living in the country and “who merely seeks to continue engaging in the same removal proceedings as before, only not from a jail cell.” *Id.* To claim that such a person was “never really here requires a much greater sleight of hand than is provided for in [*Thuraissigiam* or *Mezei*].” *Id.* at *6. “[T]he central concern of historic applications of the [entry fiction] doctrine was the admission or removal of a noncitizen, rather than detention pending an adjudication. For example, in *Mezei*, a noncitizen (*Mezei*) was “permanently excluded from the United States on security grounds but stranded ... on Ellis Island because other countries w[ould] not take him back. The Supreme Court held that *Mezei*, who had been conclusively denied entry, remained an “entering alien” despite his detention at Ellis Island (which was geographically within the United States).” *Campbell v. Almodovar*, 2025 WL 3538351 at *9 (S.D.N.Y. December 10, 2025) (citing *Mezei*, 345 U.S. at 207). “*Thuraissigiam* stands for the limited principle that those ‘at the threshold of initial entry’ stand on a different footing for due process purposes than noncitizens ‘who have established connections in this country.’” *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (citing *Thuraissigiam*, 591 U.S. at 107); *see also United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (“[Noncitizens] receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.”).

Similarly, in *Rodriguez-Acurio*, the court held that a noncitizen who had been paroled into the United States, lived here for years, worked lawfully, and appeared for a credible fear interview could not be retroactively reclassified as subject to mandatory detention under § 1225. *Rodriguez-Acurio*, 2025 WL 3314420 at *21. The court concluded that such detention instead fell “squarely within the discretionary detention framework of Section 1226(a).” *Id.* at *25. This

is true despite 8 § 1182(d)(5)(A)'s command that once a noncitizen's parole ends his case he shall be returned to "custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission." *Id.* at *18. The court held that "any other applicant for admission" residing in the United States for years would be detained under § 1226(a), i.e. discretionary detention. *Id.* (referencing *Tumba Huamani v. Francis*, 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) (holding that Section 1226 "governs the process of arresting and detaining noncitizens who have already entered the United States pending their removal"); *Lopez Benitez*, 795 F.Supp.3d at 484 (holding that "'once inside the United States ... an alien present in the country may still be removed' under Section 1226" (quoting *Jennings*, 583 U.S. at 288)).

The court should concur with these readings of § 1225 and find that noncitizen who has been present in the United States at liberty does not remain "arriving" at the threshold of entry for purposes of detention and cannot be held mandatorily.

III. Even If § 1225 Applies, Due Process Requires Release

The Due Process clause of the Fifth Amendment "covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (citing *Zadvydas, v. Davis*, 533 U.S. 678, 693 (2001)); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). Because Petitioner is not at the threshold of entry, Fifth Amendment Due Process protections attach. *See Velasques Rincon*, 2025 WL 3122784 at *7. ("to apply the entry fiction doctrine to a case like Petitioner's is to set aside the plain meaning of the Fifth Amendment altogether. Accordingly, the Court concludes that Petitioner's detention is subject to the Fifth Amendment's due-process protections.").

The Second Circuit applies the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test “when determining the adequacy of process in the context of civil immigration confinement.” *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *12 (S.D.N.Y. Sept. 12, 2025).. Each factor weighs decisively in petitioner’s favor. “The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.” *Id.*

The first *Mathews* factor—the private interest affected—is substantial. “The most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851, *see Zadvydas*, 533 U.S. at 690. Petitioner has lived in the United States after he was released on his own recognizance on March 8, 2024. ECF No. 16-7. He has a pending application for asylum in immigration court and an interest in pursuing that same relief. ECF No. 19 ¶ 13. The second *Mathews* factor—the risk of erroneous deprivation under the procedures used—also strongly favors petitioner. ICE provided no notice that it intended to take petitioner back into custody, no individualized explanation of any change in circumstances, and no opportunity to contest his redetention before it occurred. The absence of even minimal procedural safeguards creates a substantial risk of arbitrary or erroneous deprivation of liberty. *See Munoz Materano*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *13 (S.D.N.Y. Sept. 12, 2025) (“Even if, arguendo, ICE had the statutory, discretionary authority to detain Munoz Materano pursuant to § 1225, the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is.”) (citations and quotations removed). The third *Mathews* factor—the government’s interest and the burdens

of additional procedures—cannot overcome the weight of the first two factors. The government undeniably has an interest in ensuring attendance at immigration proceedings and protecting the community, but petitioner lived at liberty for over a year. Moreover, the government can, after an individualized assessment, subject Petitioner to alternatives to detention.

The balancing of the *Mathews* factors therefore overwhelmingly supports petitioner. He has a substantial liberty interest arising from more than one year of government-authorized presence; the absence of notice or individualized assessment creates a substantial risk of error; and the government’s interests can be fully protected through a minimal administrative process that it already employs in other statutory detention categories. Every court confronted with these circumstances has reached the same conclusion: due process requires notice and an individualized custody determination before re-detention occurs. Petitioner is entitled to those constitutional protections and should be released.²

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, the Court should grant the writ of habeas corpus and order Petitioner’s immediate release.

² Respondents suggest that if the Court determines Petitioner is detained under § 1226(a), he should be required to exhaust his administrative remedies through a bond hearing before obtaining relief from this Court. Opp. at 13 n. 6. This argument fails for two reasons. First, a bond hearing is an inadequate remedy because there is no initial DHS decision to review. DHS exercised no discretion at all. Having re-detained Petitioner pursuant to the wrong statute, DHS afforded him no process. “[T]he [g]overnment’s violation of his constitutional rights originated with his detention in the first instance.” *Tumba Huamani*, 2025 WL 3079014, at *7. Section 1226’s implementing regulations provide for bond hearings for the purpose of custody re-determination—a hearing held by an immigration judge after DHS makes its initial decision to detain. See 8 C.F.R. § 236.1(d)(1). Second, Petitioner raises a substantial constitutional question that cannot properly be adjudicated administratively. Petitioner does not merely seek an opportunity to contest his detention. He argues that his detention under § 1226 absent an individualized assessment violates his due process rights. Neither an immigration judge nor the BIA has jurisdiction to adjudicate constitutional issues. They are therefore not “positioned to properly adjudicate [Petitioner’s] claim.” *Lopez Benitez*, 795 F. Supp. 3d at 497.

Dated: New York, New York
December 23, 2025

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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 and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 3,427 words.