UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Perez Quintero, Migdalia Josefina *Petitioner,* v. LaDeon FRANCIS, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW. *Respondents.*	Case No. 25-cv-10107

PETITIONER'S REPLY IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner challenges her detention, which unlawfully violates her due process rights and is arbitrary and capricious under the Administrative Procedure Act.[1] In support, Petitioner states as follows:

ARGUMENT

I. Father Eduardo Fabian Arias has standing to pursue this Petition as "next friend" to Petitioner.

Congress codified the common law doctrine of "next friend" standing by allowing an application for a writ of habeas corpus to be "signed and verified… by someone acting in [the petitioner's] behalf." 28 U.S.C. sec. 2242; *Whitmore v. Arkansas*, 495 U.S. 149, 1962–63 (1990). For purposes of "next friend" standing, the party must first provide an adequate explanation as to why "the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability." *Whitmore*, 495 U.S. at 163.. The Second Circuit has long recognized that next friend standing is appropriate where a noncitizen petitioner does not speak English, or is otherwise inaccessible. *United States ex. Rel. Bryant v. Houston*, 272 F. 915, 916 (2d Cir. 1921) ("Inability to understand the English language or the situation, particularly in the case of aliens, impossibility of access to the person, or mental incapacity are all illustrations of a proper use of the 'next friend' application."). The Petitioner's next friend must also show that his interest is appropriate. *Id.* at 917. As next friend, Father Eduardo Fabian Arias has provided an adequate explanation for Petitioner's unavailability and provided clear evidence that he is acting in her best interest. Respondent has failed to assert any argument to the contrary.

[1] Petitioner has also brought a substantive due process claim on the basis of denial of medical treatment. Petitioner has been unable to receive counsel's legal mail at the facility, and therefore never received her authorization to release medical records. As such, Petitioner is unable to provide this Court with medical records from her provider. Petitioner reserves the right to raise a denial of medical care in the future once she has access to medical records.

When analyzing why a real party of interest cannot appear on their own behalf, courts have looked to whether the party was in some way inaccessible. *Whitmore*, 495 U.S. at 163. "Inability to understand the English language or the situation or . . impossibility of access to the person are all illustrations of a proper use of the 'next friend' application." *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1126 n. 8 (2d Cir. 1974) (citing *United States ex rel. Bryant v. Houston*, 273 F. 915, 916 (2d Cir. 1921)). Such is the case here. Petitioner is a Spanish speaker with no knowledge of English or understanding of the habeas process. Dkt. 14-1 (Attorney's Decl.) at ¶5. But more crucially, Petitioner was completely inaccessible to friends, family, or potential counsel upon detention. *Id.* Petitioner's location and detention status were not reflected in ICE's Online Detainee Locator System, which only provides the location of detainees who have been in ICE custody for over 48 hours. *See* "Online Detainee Locator System," *available at* https://locator.ice.gov/odls/#/search. In those 48 hours, Petitioner was denied access to a phone to call loved ones or counsel. *Id.* In fact, Petitioner was only offered a phone call well after she had been transferred out of NY to her current detention facility in Louisiana. *Id.* Prior to December 7, 2025, Petitioner had no access to phone, email, legal counsel, or translation services, and was therefore "unable to seek such relief for [her]self." *Rodriguez v. Orange Cnty. Corr. Facility*, No. 1:23-CV-0242 (JGK), 2023 WL 317692, at *3 (S.D.N.Y. Jan. 19, 2023). Immediately prior to her detention, Petitioner was solely offered a single five minute phone call with her husband, and subsequent to her detention was offered no access to phones until she had already been transferred. *Id.*; Dkt. 15-3 at 4. Petitioner did manage to call Father Fabian prior to the confiscation of her personal phone, where she once again reiterated her request for him to file this Petition on her behalf. Dkt. 14-1 at ¶7.

Father Eduardo Fabian Arias is also "truly dedicated to the best interests of the person on whose behalf he seeks to litigate. . . ." *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990). Father Fabian spoke with Petitioner just prior to her immigration interview at 26 Federal Plaza, where he informed Petitioner that he would assist her were she to be detained. Father Fabian has spoken to Petitioner multiple times since Petitioner was granted phone access, where she has reiterated her need for assistance and desire for him to pursue this Petition. Finally, "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest," *Whitmore*, 495 U.S. at 164, though courts in this Circuit have assessed whether the proposed next friend has "any" relationship whatsoever to the petitioner. *Rodriguez,* 2023 WL 317692, at *3. Petitioner and her family have been members of Father Fabian's congregation for the past two years, where Father Fabian has acted as their priest and community leader. As such, he has a significant relationship with the real party at interest and therefore has standing to pursue this Petition.

II. Petitioner's case is highly distinguishable from *Chen v. Almodovar* and *Liang v. Almodovar* because she had been paroled and received lawful TPS status prior to her detention.

Respondent urges this Court to deny Petitioner's claims on the same basis as its analysis in *Chen v. Almodovar* and *Liang v. Almodovar,* arguing that the two cases are not materially distinguishable from the case at bar. Dkt. 17 at 5-6. The circumstances giving rise to the present Petition deviate substantially from the facts of *Chen* and *Liang*, however, as Petitioner had been lawfully present in the United States for years prior to her arrest and detention on December 4, 2025. Unlike the petitioner in *Chen*, who had not received parole and was possibly released pursuant to an "Order of Release on Recognizance," *Chen v. Almodovar*, No. 1:25-CV-8350-MKV, 2025 WL 3484855, at *1 (S.D.N.Y. Dec. 4, 2025), the record here reflects that Petitioner

was clearly released on parole via 8 U.S.C. § 1182(d)(5)(A) and issued an I-94. See Ex. 6-1. So too is Petitioner's case distinguishable from Liang, who, like Chen, did not receive parole and did not reside lawfully in the United States at any point. *Liang v. Aldomovar, et al.*, No. 1:25-CV-09322-MKV, 2025 WL 3641512, at *1 (S.D.N.Y. Dec. 15, 2025). Unlike Chen, who "conceded the allegations and charge of removability" upon his release and never gained legal status, Petitioner had applied for and received Temporary Protective Status (TPS) on March 11, 2024. Ex. 8 at ¶10. And importantly, Petitioner *does* dispute the allegations in her December 4, 2025 Notice to Appear, as it erroneously claims that she was not "admitted or paroled" when she first entered the United States in September 2022. *Compare* Exhibit 6-1, Exhibit 6-4. Petitioner was paroled, and then remained in the United States lawfully under TPS.

This Court held that Chen was an "alien present in the United States who has not been admitted," because he entered unlawfully and was "not then admitted or paroled." *Chen,* 2025 WL 3484855, at *4. By contrast, Petitioner was paroled and then received lawful TPS status. "[A]n alien is subject to mandatory detention if he is either present in the United States illegally or is at the border (i.e., he meets the definition of an "applicant for admission"), *provided that where such an alien is actively "seeking" lawful status*, an "immigration officer" must "determine[ ]" that he "is not clearly and beyond a doubt entitled to be admitted ...." *Chen,* 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (citing 8 U.S.C. § 1225(b)(2)(A)) (emphasis added). As Petitioner held lawful TPS status, she was not "seeking admission" for purposes of 8 U.S.C. § 1225(b)(2)(A). *See Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025) (noting that "seeking admission. . .requires an act currently underway" and one cannot be considered "seeking admission . . .without taking some affirmative action towards that goal"). Petitioner's application for asylum does not disturb this analysis because

"[a] grant of asylum *is not* an 'admission' to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A)." *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013); *Matter of V-X-*, 26 I&N Dec. at 150 ("[A]lthough the [alien's] grant of asylum conferred a lawful status upon him, it did not entail an 'admission.'")); *see also* Section IV, *supra.*

Nor is Petitioner an "applicant for admission" according to this Court's interpretation in *Chen*, because she is not an alien who is "*present* in the United States but who was not authorized *lawfully* to be here." 2025 WL 3484855, at *3 (emphasis in original). On December 10, 2025, the Northern District of California declared the termination of Venezuela's 2023 TPS designation to be unlawful pursuant to the Administrative Procedure Act and Equal Protection Clause. *National TPS Alliance, et al. v. Kristi Noem, et al.*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *2 (N.D. Cal. Dec. 10, 2025). Though this decision is stayed pending appeal, the only court to have assessed this question has squarely held that Petitioner and others were unlawfully stripped of their valid TPS status. Given the fact that Petitioner would have authorization to remain in the United States but for this unlawful administrative action, she should not be considered an "applicant for admission" under this Court's interpretation of § 1225. Moreover, 8 U.S.C. 1254a(d)(4) explicitly provides that "[a]n alien provided temporary protected status . . . shall not be detained . . . on the basis of the alien's immigration status in the United States." 8 U.S.C. 1254a(d)(4). Because Petitioner's TPS status should never have been revoked, she should also never have been detained as a matter of law.

Because Petitioner is not an "applicant for admission" nor "seeking admission," she is detained pursuant to Section 1226(a) and is therefore eligible for release or, at minimum, a bond hearing.

III. Petitioner is a member of the *Bautista v. Almodovar* Class, which governs these proceedings.

On December 18, 2025, the Central District of California entered a final judgment in *Bautista v. Noem*, in favor of a class of noncitizens who had been subject to mandatory detention, declaring that these class members were detained pursuant to 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 94). The class is defined as "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Bautista v. Santacruz*, No. 25 Civ. 1873 (SSS) (BFM), 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Respondents argue that Petitioner does not fit into the *Bautista* class definition, and therefore cannot avail herself of classwide relief, because she was "apprehended upon arrival" on September 10, 2022 when she first entered the United States. Dkt. 17 at 2. This would be true if Petitioner was detained pursuant to her 2022 arrest. Instead, Petitioner challenges her subsequent arrest and detention in December of 2025, where she was not apprehended upon arrival but instead after her TPS status was unlawfully revoked over three years after having arrived in the country. *National TPS Alliance, et al. v. Kristi Noem, et al.*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *2 (N.D. Cal. Dec. 10, 2025). Accordingly, Petitioner fits squarely inside the *Bautista* Class and can avail herself of its injunctive relief.

While Respondents are correct that jurisdiction in the habeas context is limited to the district of confinement, see Dkt. 17 at 2, the *Bautista* Petitioners did not seek (and could not)

seek nationwide class declaratory habeas relief. In addition to habeas relief sought on behalf of petitioners within the Central District of California, however, the *Bautista* petitioners also brought APA claims in a representative capacity for the nationwide Bond Eligible Class, of which Petitioner is a member. "APA relief, unlike habeas relief, provides a complete remedy because relief would take form through vacatur of the very policy that Respondents rely on in violating the rights of Petitioners and members of the Bond Eligible Class." *Bautista v. Santacruz, et al.*,, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *15 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). Noting that Section 706(2)(A) of the APA commands a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions" that are found to be "arbitrary, capricious, ... or otherwise not in accordance with law," *see* 5 U.S.C. § 706(2)(A), the *Bautista* Court vacated the DHS policy requiring ICE employees to charge any arrested noncitizen already within the United States as an "applicant for admission" under Section 1225 and subject to mandatory detention. *Id.* at *32. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to defy the judgment in that case and continue to subject Petitioner to unlawful detention despite her clear entitlement to consideration for release on bond as a Bond Eligible Class member. Because Respondents' interpretation of Sections 1225 and 1226 have been deemed arbitrary and capricious in violation of the APA, Respondents are precluded from relitigating these same questions here. *NML Capital, Ltd. v. Banco Central de la Republica Argentina*, 652 F.3d 172, 185 (2d Cir. 2011) (issue preclusion generally applies if "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was a full and

fair opportunity for litigation in the prior proceeding, and (4) the issues previously litigated were necessary to support a valid and final judgment on the merits.") (internal quotation marks and citations omitted). In light of the *Bautista* ruling, and due to the vacatur of this policy, this Court should, at minimum, provide Petitioner with a bond hearing pursuant to Section 1226.

IV. Petitioner urges this Court to reconsider its ruling in *Chen*.

As recently recognized, there exist only three cases in this Circuit that agree with the government's mandatory detention of individuals who are not "seeking admission" into the country, but are instead already in the country, awaiting the outcome of asylum applications and/or the pending removal proceedings. *Zhi Ye v. Raul Maldonado, Jr., et al.*, No. 25-CV-6417 (AMD), 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *Liang v. Aldomovar, et al.*, No. 1:25-CV-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025), and *Chen v. Almodovar*, 25-CV-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025)). Petitioner urges this Court to reconsider its holding in *Chen v. Almodovar*, and instead join the chorus of courts within this Circuit who have overwhelmingly rejected the government's recent and erroneous interpretation of the INA:

> "By a recent count, the central issue in this case — the administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, must be detained until their removal proceedings are completed — has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, *in 350 of those cases* decided by over 160 different judges sitting in about fifty different courts spread across the United States."

Barco Mercado v. Francis, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (emphasis added); *see also id. at* Appendix A (collecting cases rejecting the government's application of mandatory detention to immigrants who were not apprehended at the border, but were instead already residing in the United States at the time of their detention). According to a recent article, "At least 225 judges ... in more than 700 cases" have rejected the government's application of § 1225 to immigrants who, like Petitioner, have resided in this country for years.

Kyle Cheney, *More than 220 judges have now rejected the Trump admin's mass detention policy*, Politico (Nov. 28, 2025), *available at* https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861. "In contrast, only eight judges nationwide ... have sided with the administration's new mass detention policy." *Id.* The first Court of Appeals to have decided this issue has agreed with the hundreds of district court judges who have soundly rejected Respondents' interpretation of 8 U.S.C. §§ 1225 and 1226. *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, — F.4th ——, 2025 WL 3552514, at *9 (7th Cir. Dec. 11, 2025). This reading is consonant with the way immigration law has been historically enforced across multiple administrations. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 490 (S.D.N.Y. 2025) (noting that the government's "novel position would expand § 1225(b) far beyond how it has been enforced historically"); *Goorakani v. Lyons*, No. 25 CIV. 9456 (DEH), 2025 WL 3632896, at *10 (S.D.N.Y. Dec. 15, 2025) (noting that after Section 1225(b)'s enactment, the DOJ issued a rule stating that applicants for admission already present in the United States would not be subject to mandatory detention); *see also* Detention and Removal of Noncitizens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, noncitizens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination."); *Barco Mercado*, 2025 WL 3295903, at *8 (same). Regulations promulgated nearly thirty years ago provide that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until now, Respondents had consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor

General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

Indeed, Supreme Court precedent reflects that it is well established that § 1225(b) applied "primarily" to individuals arriving at our nation's borders, ports of entry, or other points of inspection and who were "seeking entry" into the United States. *See Jennings v. Rodriguez*, 583 U.S. 281, 285, 297 (2018) (explaining that §1225(b) applies primarily to aliens seeking entry into the United States, in the context of "aliens who have arrived at an official 'port of entry' (*e.g.*, an international airport or border crossing) or who have been apprehended trying to enter the country at an unauthorized location"); *Rodriguez v. Robbins*, 715 F.3d 1127, 1132 (9th Cir. 2013) (explaining that § 1225(b) "applies to 'applicants for admission,' such as those apprehended at the border or at a port of entry."). This is consistent with the text of Section 1225, whose titles and headings repeatedly refer to "inspections," which solely occur at ports of entry or near the border. *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025). The Supreme Court has also unequivocally stated that § 1226 "generally governs the process of arresting and detaining" noncitizens "once inside the United States." *Jennings*, 583 U.S. at 288. This Supreme Court ruling is binding precedent on this Court, as it cannot defer to an agency interpretation that conflicts with the statute's unambiguous text. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"); *see also id.* at 386 (establishing that "[t]he views of the Executive Branch could inform the judgment of the Judiciary, but [do] not supersede it."); *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 328 (2014) ("[A]n agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."). "[T]he longstanding practice of the government—like any other interpretive

aid—can inform [a court's] determination of what the law is," particularly where an agency acts contrary to both longstanding practice and statutory text. *See Loper Bright*, 603 U.S. at 386 (cleaned up).

Petitioner respectfully requests this Court reconsider its prior holdings based on this clear precedent, as well as for the reasons articulated in *Goorakani,* 2025 WL 3632896, at *8-12. The *Goorakani* court reasoned that the phrase "seeking admission" could not be synonymous with the phrase "applicant for admission," as this Court held in *Chen*, because it would render Section 1225(b)(2)(A)'s use of the term "seeking admission" superfluous. *Id.* at *8 (S.D.N.Y. Dec. 15, 2025) (citing *Castanon-Nava*, 2025 WL 3552514, at *9); *Lopez Benitez*, 795 F. Supp. at 489; *see also United States v. Castleman,* 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment) (explaining that the "presumption against ineffectiveness" means "that Congress presumably does not enact useless laws"). Moreover, Section 1225's title, which references the "expedited removal of inadmissible arriving aliens," makes plain that Section 1225's mandatory detention is limited only to *arriving* noncitizens, rather than all applicants for admission. *See* 8 U.S.C. § 1225(a)(1) (defining "applicant for admission" to mean (1) those who already "present in the United States who ha[ve] not been admitted," or (2) those who "arrive[ ] in the United States."); *see also Barco Mercado,* 2025 WL 3295903. Section 1225's implementing regulations corroborate this reading, as they define "arriving alien" as "an applicant for admission coming or attempting to come into the United States." *Goorakani*, 2025 WL 3632896, at *9 (citing *Martinez v. Hyde*, 792 F. Supp. 3d 211, 219 (D. Mass. 2025) and 8 C.F.R. § 1.2)).

Nor is an asylum applicant like the Petitioner in *Chen* or Petitioner here "seeking admission." The term "admission" is defined as "lawful entry" 8 U.S.C. § 1101(a)(13)(A), and

the word "entry" has "long been understood to mean a crossing into the territorial limits of the United States." *Pie v. Noem et al.*, 25 Civ. 1564, 2025 WL 3496156, at *5–6 (W.D. Mich. Dec. 5, 2025). Petitioner did not "enter" the country lawfully (that is, by "admission"), but this does not alter the fact that she had already entered the United States multiple years prior. In seeking asylum she is not seeking to lawfully *enter*, but is instead seeking to lawfully *stay*. *Goorakani*, 2025 WL 3632896, at *9 (citing *Hing Sum v. Holder*, 602 F.3d 1092, 1100-01 (9th Cir. 2010) (explaining that, in enacting Sections 1225 and 1226, Congress adopted "the BIA's case law as it stood in 1996," which distinguished between "admission," which "referred to a 'lawful' entry' ... as opposed to ... 'unlawful' entries")); *see also Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) ("A grant of asylum *is not* an 'admission' to the United States under Section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A)."); *Matter of V-X-*, 26 I&N Dec. at 150 ("[A]lthough the [alien's] grant of asylum conferred a lawful status upon him, it did not entail an 'admission.'")). This Court's reading of "seeking admission" would also yield inconsistencies in certain common cases. For instance, an individual who lawfully enters the country (*e.g.*, on a visa) and then seeks asylum after this lawful entry, would nonetheless still be "seeking admission"—despite having already been lawfully admitted into this country.

Finally, the *Goorakani* court highlighted a major reason for this Court to reconsider its *Chen* holding as it pertains to the Laken Riley Act, Section 1226(c). This Court reads Section 1226 as applying to those who entered lawfully on a visa, and then remain unlawfully beyond its expiration date. *Chen*, 2025 WL 3484855, at *7. Yet the murder of Laken Riley was perpetrated by a noncitizen who entered the United States unlawfully, not someone who overstayed a visa, and who, under *Chen*, would already be subject to mandatory detention under Section 1225(b). This reading of Section 1225 and Section 1226 defies legislative intent, leads to redundancy, and

would render this recent amendment a complete surplusage. *Goorakani*, 2025 WL 3632896, at *10 (S.D.N.Y. Dec. 15, 2025) (citing *Barco Mercado*, 2025 WL 3295903, at *7 and *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.")).

V. Petitioner urges this Court to reconsider its holding in *Liang*.

For the same reasons, this Court should reconsider its holding in *Liang*. But Petitioner urges this Court to reconsider *Liang* for one additional reason. Liang, like Petitioner, was issued a Form I-200 arrest warrant, which is directed to immigration officers "authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act ... to serve warrants of arrest for immigration violations." Form I-200; *Liang*, 2025 WL 3641512, at *2; Dkt. 15-2. Crucially, the statutory codification of INA 236 is 8 U.S.C. § 1226, *see* Credits, 8 U.S.C. § 1226, which indicates that both Liang and Petitioner here were detained pursuant to the discretionary detention provision of § 1226. Indeed, Section 1225 has no warrant requirement. *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *6 (E.D.N.Y. Sept. 29, 2025). The inconsistency of Respondents' position as to the statutory basis of Petitioner's detention implies that it "was adopted post hoc and raised for the first time in this litigation." *Lopez Benitez*, 795 F.Supp. at 486; *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *8 (E.D.N.Y. Oct. 6, 2025). In analyzing administrative actions, this Court is bound by the Supreme Court's holding in *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, which clearly stated that "[a]n agency must defend its actions based on the reasons it gave when it acted." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22, 24 (2020). To do so would not "impose extra-statutory process requirements on the Government because the Government chose to issue a warrant when it seems no warrant was required." *Liang*, 2025 WL 3641512, at *2 n.6.

It is true that, if Petitioner was *actually* detained pursuant to Section 1225, there would be no need for a warrant. However there is no conceivable justification for Respondents to have issued a Section 1226 warrant for her arrest aside from the fact that Petitioner was indeed arrested pursuant to Section 1226. To hold otherwise would require this Court to make the damning assumption that the agency acted arbitrarily and without rational basis. *Matter of Li*, 29 I. & N. Dec. 66, 66 (BIA 2025) ("Once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant."). As the Second Circuit has held, the "government's power to detain an immigrant must be grounded in a specific provision of the INA," *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018), *as amended* (May 22, 2018), a requirement that would be meaningless if the authority could be shifted midstream.

It is of no moment that a Form-200 warrant also cites to 8 C.F.R. 287.3, which governs the "[d]isposition of cases of aliens arrested without warrant." This provision cites to multiple circumstances in which there might be a warrantless arrest, not exclusively in the Section 1225 context, and does not establish that the warrant–which explicitly cites to the INA equivalent of Section 1226–was issued to effect a mandatory detention under Section 1225(b). *Maldonado v. Baker*, No. CV 25-3084-TDC, 2025 WL 2968042, at *6 (D. Md. Oct. 21, 2025); *Hernandez-Lugo v. Bondi*, No. CV GLR-25-3434, 2025 WL 3280772, at *5 (D. Md. Nov. 25, 2025); *Velasquez v. Noem*, No. CV GLR-25-3215, 2025 WL 3003684, at *4 (D. Md. Oct. 27, 2025); *Huang v. Almodovar*, No. 25 CIV. 9346 (DEH), 2025 WL 3295912, at *3 (S.D.N.Y. Nov. 26, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *24–25 (E.D.N.Y. Nov. 28, 2025). Crucially, Petitioner was also charged with removability pursuant to INA 282(a)(6)(A)(i), codified as 8 U.S.C. Section 1182(a)(6)(A)(i), which is a statute applicable

to noncitizens who are already present in the U.S., not to noncitizens who are considered "arriving." Dkt. 15-4; *see Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007); *Jennings*, 583 U.S. at 289 (detention of those "already in the country pending the outcome of removal proceedings" is governed by § 1226). This Court should also reconsider its due process holding in *Liang*, for the reasons discussed in Section VI, *infra*.

VI. Respondents violated Petitioner's Due Process rights when they subjected her to mandatory detention.

Noncitizens can be released from custody only if a noncitizen demonstrates to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding. 8 C.F.R. § 1236.1(c)(8); *see Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"). In first releasing Petitioner on September 11, 2022, Respondents necessarily conducted that analysis and determined she posed neither a danger nor a flight risk. In redetaining Petitioner well after she was granted parole, work authorization, and TPS status, Respondents do not now point to any evidence demonstrating that their original flight and danger assessment is no longer accurate, or provide any other evidence sufficient to justify Petitioner's current detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (noting that danger and flight risk are the sole two justifications for immigration detention); *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (same). Nor could they, as there is absolutely no indication that she is either a danger or a flight risk. She has no criminal history; she filed a timely asylum application; and has attended immigration court. In the absence of a justification, her redetention violates her right to due process. *See Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (finding noncitizen asylum applicants subjected to mandatory detention had credibly alleged

violations of their substantive and procedural due process rights). As a growing body of case law confirms, the deprivation of Petitioner's most essential interest—that of liberty—without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) ("Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights"); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (same). The risk of erroneous deprivation, in the absence of any individualized custody determination, is enormous—and the public interest in detention nonexistent.

To justify her current detention, Respondents contend that they now possess the power to detain Petitioner notwithstanding her previous release on parole and lawful TPS status because they have invoked a new, inapplicable statute authorizing her mandatory detention. Their interpretation runs counter to the plain text of the statute, as well as decades of established judicial and agency precedent. *See* Section IV, *supra*. It also runs counter to the facts of Petitioner's case. as her warrant cites to Section 1226, not Section 1225. *See* Section V, *supra*. But even if Respondents are correct that Petitioner is detained pursuant to Section 1225, this does not defeat her constitutional claims. Petitioner's due process claims merit her immediate release irrespective of her statute of detention, but all the more so here where she was undisputedly released on parole at the border and later provided lawful TPS status—putting her outside the purview of the cases Respondents rely upon to suggest she lacks any meaningful due process rights.

Respondents have urged this Court to find that Petitioner has no constitutional right to challenge her detention, relying almost exclusively on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) and its progeny, including the Supreme Court's more recent interpretation of *Mezei* in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Dkt. 17 at 6; Dkt. 17-1 at 11-16. Neither *Mezei nor Thuraissigiam* apply here. Respondents conflate claims challenging the process of "admission" to the United States with claims challenging unlawful detention pending that admissibility determination. The Supreme Court did not state—and has never stated—that the Due Process Clause is inapplicable in determining the constitutionality of detention pursuant to Section 1225(b). In *Thuraissigiam*, the Supreme Court emphasized that the petitioner did not challenge "unlawful executive detention." 591 U.S. at 119; *id.* at 122 ("[T]he legality of his detention is not in question."). Rather, the petitioner there sought admission, requesting "the opportunity to remain lawfully in the United States" through judicial review of a determination that he did not have a credible fear of persecution and could therefore be removed expeditiously. *Id.* at 117–19. The Court held that the Due Process Clause did not provide review of an admission (not detention) determination, because an applicant for admission apprehended yards from the border and found not to have credible fear "has only those rights regarding admission that Congress has provided by statute." *Id.* at 140. Here, Petitioner does not challenge any determination about her "admissibility" (that question has been progressing in her full removal proceedings), but the constitutionality of her detention—the traditional purpose of the Great Writ. Moreover, Petitioner is not similarly situated to the petitioner in *Thurassigiam* who, having made it 25 yards into the United States was literally, at "the threshold of initial entry" and in expedited removal. *Id.* at 190.

Mezei is also distinguishable from the facts present here. Like *Thuraissigiam*, *Mezei* regards the issue of exclusion from the country, rather than the appropriateness of one's detention while removal proceedings remain pending. *See generally Mezei,* 345 U.S. 206 (1953). Moreover, *Mezei* distinguished between noncitizens on the threshold of entry, versus those who have "passed through our gates, even illegally," the latter of whom "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212. Petitioner, unlike Mezei, has not been "denied entry," *Mezei*, 345 U.S. at 212; as she was detained in the interior. And unlike Mezei, her release from custody poses no national security concerns. *Id.* at 216. Petitioner therefore stands in a very different posture than the individuals in *Mezei* and *Thurassigiam*, individuals who presented themselves at the border and therefore had no statutory right to further process. Her release would not be an "admission" but simply a return to the status quo the government had previously authorized. Here, the government already inspected Petitioner and permitted her to enter on parole while she pursued asylum, and then subsequently granted her lawful status via the TPS program. And Petitioner relied on that decision, lawfully living and working for years until her arrest and detention. See *Thuraissigiam*, 591 U.S. at 107 (noting noncitizens "who have established connections in this country have due process rights in deportation proceedings"). The Court should not therefore credit the government's legal fiction that Petitioner is still "deemed at threshold of entry" Dkt. 17-1 at 13, for purposes of due process. Accordingly, as numerous courts have repeatedly held, *Thurassigiam* and *Mezei* have no bearing on claims of noncitizens who have lived and worked in the United States for years. *See, e.g., Rojas v. Almodovar*, No. 25-CV-7189 (LJL), 2025 WL 3034183, at *5 (S.D.N.Y. Oct. 30, 2025) (noting that, for a previously lawful permanent resident paroled into the United States was accorded due process rights to challenge his detention,

because he "can hardly be compared to that of Mezei, who remained in detention from his arrival, or to Thuraissigiam, who entered the country without detection for only the briefest moment"); *Campbell v. Almodovar*, No. 1:25-CV-09509 (JLR), 2025 WL 3538351, at *8 (S.D.N.Y. Dec. 10, 2025), *opinion clarified,* No. 1:25-CV-09509 (JLR), 2025 WL 3626099 (S.D.N.Y. Dec. 15, 2025) (noting that *Thurassigiam* and *Mezei* do not restrict due process rights of petitioner challenging detention because the "entry fiction" only applies in cases where the government is determining which noncitizens to *admit*, not detain); *Al-Thuraya v. Warden*, No. 25-cv-02582 (AS), 2025 WL 2858422, at *3-*4 (S.D.N.Y. Oct. 9, 2025) (same).[2]

VII. Petitioner's APA claim is not foreclosed by *J.G.G.* and Respondents violated the APA by subjecting her to mandatory detention.

Respondents argue that Petitioner's APA claim is barred by 5 U.S.C. § 704, which "permits judicial review of agency action only when, *inter alia*, 'there is no other adequate remedy in a court.'" Dkt. 17-1 at 7 (quoting 5 U.S.C. § 704). Respondents rely on a recent Supreme Court opinion in *Trump v. J.G.G.*, 604 U.S. 670 (2025) for this analysis, where the Court noted, per curium, that habeas relief, rather than the APA, is the proper vehicle where a litigant challenges the validity of their confinement. *J.G.G.*, 604 U.S. at 674. *J.G.G.* is inapposite

[2] Petitioner's warrant also raises due process concerns independent of its statutory basis, as it impermissibly relied on the same basis as her first detention in September of 2022. An administrative arrest provides a valid basis for detention of a noncitizen, *Abel v. United States*, 362 U.S. 217, 233 (1960)), but the agency has never interpreted that to mean administrative warrants can be successively issued against the same person on the same basis and without new cause. "[A]dministrative warrants raise serious due process and Fourth Amendment questions when used in this way." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *14 (S.D.N.Y. June 12, 2018); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (additional citations omitted) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable . . . .") (citation omitted). Rather than provide a new basis for her detention, Respondents issued a warrant stating the basis for her detention was due to her original unlawful entry on September 10, 2022. *Compare* Dkt. 15-1 to Dkt. 15-4.

here, however. In *Orellana v. Francis,* the Eastern District of New York distinguished the facts of *J.G.G.* from a habeas petition similar to the one at bar, noting that the petitioners in *J.G.G.* dismissed their habeas claims but proceeded to challenge the validity of their confinement through the Alien Enemies Act and APA. *Orellana v. Francis,* No. 25-CV-04212 (OEM), 2025 WL 2822640, at *5 (E.D.N.Y. Oct. 3, 2025) (citing *J.G.G.,* 604 U.S. at 671). The Supreme Court correctly noted that such claims "must be brought in habeas," *J.G.G.,* 604 U.S. at 672. This decision has no bearing on petitions such as this one, which correctly rely on the writ of habeas to challenge detention. *Orellana*, 2025 WL 2822640, at *5. The *Orellana* court noted that the traditional function of the writ is to secure release from illegal custody, which may include a challenge based on violations of the APA. *Id.* (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). Indeed, the statutory provision governing judicial review of federal agency actions explicitly states that agency actions may be reviewed in "any applicable form of legal action, including actions for ... writs of ... *habeas corpus*, in a court of competent jurisdiction." 5 U.S.C. § 703 (emphasis added). The Supreme Court has interpreted the APA to provide "a broad spectrum of judicial review of agency action." *Bowen v. Massachusetts*, 487 U.S. 879, 904 (1988); *see also Valez-Chavez v. McHenry*, 549 F. Supp. 3d 300 (S.D.N.Y) ("[Congress] has never manifested an intent to require those challenging an unlawful, nationwide detention policy to seek relief through habeas rather than the APA.") (citing *R.I.L-R v. Johnson*, 80 F.Supp. 3d, 164, 186 (D.D.C. 2015)). Section 704 cannot be interpreted to overcome the APA's presumption of judicial review without "clear and convincing evidence of congressional intent" to provide an alternative statutory procedure for judicial review. *Larson v. United States*, 888 F.3d 578, 585 (2d Cir. 2018). As this Court has previously recognized in *Valez-Chavez*, 549 F.Supp.3d at 306, "[n]othing in the text of the writ of habeas corpus… demonstrates the customization or

exclusivity needed to prove, by clear and convincing evidence, that Congress created the writ as a special and adequate review procedure within the meaning of 5 U.S.C. § 704."

Respondents cite no other bases for why Petitioner's APA claims fail. Under the APA, a court must "hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2). When Respondents first encountered Petitioner, they granted her parole after a necessary determination that she was not a flight risk or danger to the community. 8 C.F.R. § 1236.1(c)(8). In redetaining Petitioner in December 2025, Respondents offer no new evidence (nor any evidence whatsoever) that any authorized official found Petitioner to be a flight risk or a danger to the public. Nor is there evidence that such an official found that humanitarian reasons do not warrant Petitioner's presence in the United States. "[A]n administrative agency is not allowed to change direction without some explanation of what it is doing and why . . . ." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. N.L.R.B.*, 802 F.2d 969, 974 (7th Cir. 1986). Respondents have thus acted arbitrarily, as they fail to show that they complied with either clause of 8 C.F.R. § 212.5(e)(2)(i), and offer no basis as to why their prior determination as to Petitioner's flight risk and danger assessment is no longer accurate. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency" between agency actions is "a reason for holding an interpretation to be an arbitrary and capricious change."). Their detention of Petitioner is therefore in violation of the APA and Petitioner should be released on that basis alone. In addition, this Court must find Petitioner's detention to be arbitrary and capricious on the basis articulated in *Bautista*, *see* Section III, *supra*, and because the underlying revocation of the Venezuela TPS program, which was the basis of Petitioner's lawful TPS status, was also deemed to be a violation of the APA. *National TPS Alliance, et al. v.*

Kristi Noem, et al., No. 25-CV-01766-EMC, 2025 WL 3539156, at *2 (N.D. Cal. Dec. 10, 2025).

CONCLUSION

For the foregoing reasons, Petitioner's detention is unlawful and this Court should order her release, or, at minimum, a bond hearing.

Dated: January 5, 2026
Queens, NY

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CERTIFICATE OF SERVICE

I, Kelly Jo Popkin, hereby certify that on January 5, 2026, I electronically filed the foregoing Reply in Support of Petition for Writ of Habeas Corpus with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effectuated by the CM/ECF system upon all parties.

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