UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

VICENTE SAUL LOPEZ-NIZ *Petitioner*, v. **GREG HALE,** **PATRICIA HYRDE,** **TODD LYONS,** **KRISTI NOEM,** **PAMELA J. BONDI**, and **DONALD J. TRUMP** *Respondents*.	Case No. 2:25-cv-912

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

NOW COMES Petitioner, through his attorneys, and submits this Reply to Federal Respondents' Opposition to Emergency Petition for Writ of Habeas Corpus, and respectfully requests that this Honorable Court grant the instant petition for a writ of habeas corpus and order his immediate release or, in the alternative, order the government to provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order. As further grounds, Petitioner states as follows.

I. Mandatory Detention of Petitioner Violates his Statutory Right to a Bond Hearing under 8 U.S.C. § 1226 (a)

First and foremost, Petitioner falls within the class certified by Judge Saris of the District of Massachusetts. *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3033769, at *14 (D. Mass. Oct. 30, 2025) (certifying class of noncitizens subject to mandatory detention under the government's recent interpretation of § 1225(b)(2)(A) who are either detained within

Massachusetts or subject to the jurisdiction of an immigration court in Massachusetts).[1] On December 19, 2025, after filing of this petition, Judge Saris held that §1225(b)(2)(A) does not authorize the mandatory detention of the class members without a bond hearing. *Guerrero Orellana v. Moniz,* No. 25-CV-12664-PBS, 2025 WL 3687757, at *7 (D. Mass. Dec. 19, 2025) (granting declaratory relief to the class). Accordingly, Petitioner should be afforded the protections of the class, including an individualized bond hearing before an Immigration Judge.[2]

With Respondents' confirmation that the Department of Homeland Security (DHS) does not intend to subject Petitioner to expedited removal, the issue in this case is a narrow question of statutory interpretation, which Respondents concede has already been answered by "the vast majority of district courts," including this Court, in Petitioner's favor. *See* ECF No. 7. n.2; *see generally Piedrahita-Sanchez v. Turek et al*, No. 2:25-cv-875, slip op. (D. Vt. Nov. 14, 2025) (Session, J.) (ECF No. 13.) (collecting cases); *Walizada v. Trump*, No. 25-CV-768, 2025 WL 3551972 (D. Vt. Dec. 11, 2025) (Reiss, C.J.); *Lopez v. Trump*, No. 25-CV-863, 2025 WL 3264151 (D. Vt. Nov. 17, 2025) (Crawford, J.). Indeed, courts around the country have found that Respondents' interpretation of 8 U.S.C. 1225 "runs counter to the plain language of the [Immigration and Nationality Act (INA)], foundational principles of statutory interpretation, and the INA's statutory scheme." *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *4 (C.D. Cal. Nov. 25, 2025).

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[1] Petitioner is a member of the class because he (1) was arrested or detained in Massachusetts on December 11, 2025, which is after September 22, 2025; (2) Chelmsford Immigration Court located in Massachusetts is the administrative control court; (3) he is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1); (4) at the time of his entry in 2022, the government did not allege that he had been admitted or paroled into the United State pursuant to 8 U.S.C. § 1182(d)(5)(A); (5) he does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c); (6) he is not subject to post-final order detention under 8 U.S.C. § 1231; and (7) his most recent arrest did not occur at the border while he was arriving in the United States. *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757, at *10 (D. Mass. Dec. 19, 2025).

[2] Petitioner is also entitled to the statutory protections of a bond hearing under 8 U.S.C. § 1226 (a) as a member of the class certified by Judge Sykes of the Central District of California in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The complete statutory framework for immigration detention is complex but the issue in this case involves the difference between two sections: Section 1225(b), long understood to authorize "detention of certain aliens seeking to enter the country" and Section 1226(a) which is "generally understood to apply to noncitizens 'already present in the United States,'" *Jennings v. Rodriguez*, 583 U.S. 281, 281, 303 (2018). By its plain meaning, the title of Section 1225, "Inspection by Immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing," applies to those noncitizens presenting themselves at a port of entry, in the act of *arriving* to the United States, and seeking formal admission. *See Piedrahita-Sanchez,* slip op. Section 1225(b)(2) provides that "in the case of an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). As discussed in *Walizada,* "applicant for admission" and "seeking admission" are distinct concepts. 2025 WL 3551972. Based on the plain language and common canons of statutory construction, "seeking admission" refers to "those noncitizens presenting themselves at the border, or who were recently apprehended just after entering." *See Piedrahita-Sanchez,* slip op. at 9. And those noncitizens apprehended upon arrival at a port of entry are subject to mandatory detention. *Id.* In contrast, noncitizens apprehended in the interior of the country after issuance of a warrant as outlined in Section 1226(a) are subject to discretionary detention. *Id.* Respondents' argument that the legislative history supports its statutory interpretation or that Congress intended to subject all noncitizens who are encountered at any time after entering the United States without inspection to mandatory detention is both novel and unpersuasive. *Id.* at 11-12.

In this case, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), because, as a person already present in the United States and as a special immigrant juvenile, Petitioner was neither "seeking admission" nor an "applicant for admission" at the time of his recent apprehension on December 11, 2025. Petitioner was not "seeking admission" as it is uncontested that Petitioner has been physically present in the United States for over three years, since May 2022, when he arrived as an unaccompanied alien child (UAC). *See* 6 USC 279 (g)(2) (defining "unaccompanied alien child"). Importantly, Petitioner was not subjected to mandatory detention under 8 U.S.C. § 1225 upon his first apprehension in 2022 but, as Respondents acknowledged, was subject to special procedures for unaccompanied children. *See* 8 USC 1232 (c)(2)(A). The Petitioner's release under 8 U.S.C. § 1232 is relevant, not because he might still today be considered an unaccompanied alien child, but because it undermines any argument that he is still considered "at the threshold of initial entry." *See Portillo Martinez v. Hyde*, No. 25-11909, 2025 WL 3152847 (D. Mass. Nov. 12, 2025) (finding detention of a special immigrant juvenile could not be under either 1225(b)(1) or 1225(b)(2) and rejecting the reasoning in *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020)).

In fact, at the time of Petitioner's initial apprehension in 2022, Custom and Border Patrol (CBP) issued a Form I-862 Notice to Appear in immigration court.[3] *See* Form I-862 Notice to Appear (Exhibit A hereto). Notably, in 2022, CBP officers marked "You are an alien *present in the United States* who has not been admitted or paroled," and left blank "You are an arriving alien." Ex. A. At the time, CBP also charged Petitioner with removal under 212(a)(6)(A)(i) ("you are an alien *present in the United States without being admitted or paroled,* or who arrived in the

[3] Although the Department of Homeland Security (DHS) could have filed the 2022 Notice to Appear with an immigration court to initiate removal proceedings against Petitioner at any time, DHS chose not to prosecute the case, and Petitioner was never scheduled for an immigration court hearing until his more recent apprehension and service of a superseding Notice to Appear listing a hearing date of December 29, 2025.

United States at any time or place other than designated by the Attorney General") and not 212(a)(7) (A) (i) (1)("as an Immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as req"). Ex. A.

Respondents now point to a superseding I-862 Notice to Appear that itself contradicts the claim that the Petitioner is an arriving alien "seeking admission." Form I-862 Notice to Appear, ECF No. 7-1 ("Superseding Notice to Appear"). The Superseding Notice to Appear also alleges that Petitioner is "an alien *present in the United States who has not been admitted or paroled,"* rather than "an arriving alien." *Id.* In the Superseding Notice to Appear, DHS again charges Petitioner as removable under 212(a)(6)(A)(i) and adds, without support, a charge for removal under 212(a)(7)(A)(i)(1). *Id.* On the government's own terms, the Petitioner is being charged as both being *present without admission* or parole and one who, *at the time of application for admission*, failed to possess valid documentation. *Id.* The contradiction in the government's own charging documents simply belies the point that at the time of his most recent apprehension, Petitioner was not an arriving alien "seeking admission" or "applicant for admission" to the United States. *See generally Walizada,* 2025 WL 3551972.

The Respondents further fail to acknowledge the significance of Petitioner's status as a special immigrant juvenile (SIJ).[4] ECF Doc. No. 1-1. The INA defines a "special immigrant" as "an immigrant *who is present in the United States*." 8 U.S.C. § 1101(a)(27)(j). Petitioner's approved classification as a special immigrant juvenile is irreconcilable with the view that the Petitioner is still "seeking admission" to the United States. See *Rodriguez v. Perry*, 747 F. Supp.

[4] DHS' decision to detain and de-designate Petitioner as an "unaccompanied alien child" or to terminate his deferred action does not impact his SIJ classification. Revocation of SIJ is governed separately by 8 C.F.R. 204.11(j).

3d 911, (E.D. Va. 2024) (concluding individual's "SIJ status weighs in favor of finding that, when ICE arrested and detained him in June 2023, he was an 'alien present' in the United States and was entitled to a bond hearing under § 1226(a)").

At the time of apprehension, Petitioner was also not an "applicant for admission." Petitioner's SIJ status renders him statutorily eligible for adjustment of status to lawful permanent resident (green card) when an immigrant visa becomes available. 8 U.S.C § 1255(h); *see Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 158 (3d Cir. 2018) ("SIJ designees are a 'hair's breadth from being able to adjust their status, pending only the availability of immigrant visas and the approval of the Attorney General.'") An immigrant visa becomes available to the Petitioner when his priority date (October 19, 2023) becomes "current." Form I-797, Notice of Action, ECF No. 1-1 (Petitioner's SIJ approval notice and listing priority date). Since Petitioner's priority date is not current, he is unable to apply for a green card, meaning he is unable to "apply for admission."[5] Many thousands of special immigrant juveniles, like Petitioner, who are caught in a growing and well-documented backlog, are forced to wait years before they may have their applications for admission considered. *See* Rachel Leya Davidson, Laila L. Hlass, Katia Leiva & Gabriela Cruz, *Immigrant Youth Trapped in the SIJS Backlog,* SIJS Backlog (2023), https://www.sijsbacklog.com/false-hopes.[6]

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[5] In recognition of the fact that SIJ is a "protective classification designed by Congress to safeguard abused, abandoned, or neglected alien children who are able to meet its rigorous eligibility requirements," *Osorio-Martinez*, 893 F.3d at 158, the INA waives certain admissibility requirements for SIJ youth at the time of adjustment of status and deems such individuals 'paroled' into the United States. 8 U.S.C. § 1255(h). In particular, the INA waives 8 USC § 1182(a)(6)(A)(i) and 8 USC § 1182 (7)(A)(i) at the time of adjustment – the same charges DHS now brings against Petitioner in its superseding Notice to Appear. 8 U.S.C. § 1255(h) and 8 C.F.R. § 245.1(e)(3)(iii).

[6] Termination of Petitioner's deferred action and employment authorization have no impact on his ability to seek adjustment of status when an immigrant visa becomes available. *See Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *4 (D. Mass. Sept. 29, 2025) (recognizing USCIS had discretion to terminate a grant of deferred action to SIJS and still finding individual subject to 1226(a) as a result of the SIJ approval).

In sum, at the time of his recent apprehension, Petitioner was neither "seeking admission" nor an "applicant for admission" to the United States, and as such, mandatory detention under 8 U.S.C. § 1225(b)(2) violates his statutory right to a bond hearing under 8 U.S.C. § 1226 (a).[7]

II. Mandatory Detention of Petitioner Violates his Constitutional Right to Substantive and Procedural Due Process

Petitioner's wrongful detention under 8 U.S.C. § 1225 violates his Fifth Amendment right to due process, including the right to an individualized detention hearing prior civil commitment and deprivation of liberty. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Addington v. Texas*, 441 U.S. 418, 425 (1979). To determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment, courts apply the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Petitioner is a nineteen-year-old indigenous Guatemalan of Mam heritage, who has been under the care and custody of his sister due to parental neglect since he was fifteen. At the time of his arrest, he was working with authorization of the U.S. government and awaiting an opportunity to apply for lawful permanent residence, a status he is statutorily eligible for as a classified special immigrant juvenile. He has now been detained for over a week at a prison nearly four hours from family members. His only alleged crime is a February 2025 state misdemeanor for unlicensed operation of a motor vehicle, which Petitioner mistakenly

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[7] District Courts nationwide who have considered whether special immigrant juveniles can be subject to mandatory detention in similar circumstances have concluded otherwise and found their detention to be governed by 8 USC 1226. *See* e.g., *Campos-Flores v. Bondi*, No. 25-cv-797, 2025 WL 3461551 (E.D. Va. Dec. 2, 2025)(youth who had entered as UAC without inspection, was subsequently granted SIJS, and detained by ICE years later, was detained under 1226; continued detention without a bond hearing violated due process rights); *Singh v. Andrews*, No. 25-01543, 2025 WL 3248059 (E.D. Cal. Nov. 19, 2025)(ordering bond hearing for noncitizen with SIJS whom ICE detained several years after he had entered without inspection); *Lopez Sarmiento v. Perry*, No. 25-CV-01644, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025)(concluding application of Section 1225(b) to individuals with SIJ already in the country contravenes the plain text and statutory scheme of the INA because Section1225(b)(2)(A)'s scope extends only to those individuals actively seeking admission into the country, and not those that have already entered the country); *Casun v. Hyde*, No. 25-CV-427-JJM-AEM, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025)(concluding individual with SIJ is subject to detention under 1226 and not 1225).

believed he had resolved by securing a driver's license. *See* Massachusetts Trial Court Docket Sheet, (Exhibit B hereto); Petitioner's Valid Driver's Massachusetts License (Exhibit C hereto). He has been detained without any pre-detention, individualized determination as to whether he poses a flight risk or any risk of dangerousness. His private interest in "freedom from imprisonment" is strong, especially where the deprivation is not the result of a criminal adjudication. *Velasco Lopez v. Decker*, 978 F.3d at 851. And where there are no procedural safeguards in the form of a bond hearing, the risk of error is grave. *See Piedrahita-Sanchez,* slip op. at 13. Theoretical availability of temporary parole under 8 U.S.C. 1225(b)(2) does not mitigate the risk of erroneous deprivation in the interim. *Id.* at n.6. Finally, the Respondents have identified no significant interest in Petitioner's continued detention. *Id.* at 15. They have not alleged that he *is* a danger or a flight risk, nor could they as Petitioner has sought to regularize his immigration status since shortly after his arrival as an unaccompanied child and he has every reason to complete the process of applying for a green card based on his classification as a special immigrant juvenile once a visa becomes available. In sum, Petitioner's continued detention without an individualized hearing at which the government bears the burden to show he is a danger and a flight risk is a violation of his constitutional right to due process.

III. An Order of Immediate Release is an Appropriate Remedy

"[T]he traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In the present case, Petitioner's immediate release from custody is an appropriate remedy, and several recent cases agree. *See Rocano Buestan v. McShane*, 2025 WL 3496361, at *6 (S.D.N.Y. Dec. 5, 2025) (Clarke, J.) (bond determination "would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained [him] under the wrong statute and without any

notice or opportunity to be heard, much less the procedures required under Section 1226(a)") (quoting *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025)).; *Campos v. Deleon,* 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (ordering immediate release as remedy to habeas and unlawful detention); *Orea v. Francis*, 1:25-cv-10067-JMF (S.D.N.Y. Dec. 7, 2025) (ECF No. 6) (same); *Morocho v. Jamison*, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025) (same); *Guerrero Lepe v. Andrews*, 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) (same). As courts have held all over the country, Petitioner's detention without any pre-deprivation process violates his procedural and substantive due process rights and this alone warrants his immediate release. *See Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release); *see also Tumba v. Francis*, 2025 WL 3079014, at *7 (S.D.N.Y. Nov. 4, 2025). As noted, the government has no legitimate interest in detaining Petitioner when they have not considered whether he is a flight risk or a danger—the only two constitutionally permissible reasons for immigration detention. *See Lliguicota v. Cabezas*, 2025 WL 3496300, at *2 (D.N.J. Dec. 5, 2025) (ordering immediate release where the record contains no indication that Petitioner received any individualized assessment of flight risk or danger and no basis under § 1226(a) that could support Petitioner's continued detention).

"[T]here is no dispute that the provisions at issue here are mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025). Respondents have alleged that Petitioner is being held under § 1225 and a bond hearing is not required. Respondents cannot simultaneously allege that he is held under 1226(a). If he were held under 1226(a), Petitioner would already have been entitled to certain procedural protections

as "§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020), *appeal withdrawn, sub nom. Velesaca v. Wolf*, No. 20 Civ. 2153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020). During an individualized determination under 1226(a), DHS officers can consider whether the noncitizen is a "danger to property or persons" and is "likely to appear for any future proceeding." *Lopez Benitez*, 795 F. Supp. 3d at 493, *citing* 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8). It is only after an officer's initial, *individualized* assessment and custody determination that a noncitizen held under 8 U.S.C. § 1226(a) is entitled to a re-determination by an Immigration Judge in the form of a bond hearing. *Id.*

It is unclear what ICE's assessment was that led to Petitioner's detention. Respondents imply here that there was *no* consideration of Petitioner's individual circumstances because they allege Petitioner is detained mandatorily under 8 U.S.C. § 1225(b)(2). Given procedures under 8 U.S.C. § 1226(a) were not adhered to in initially detaining Petitioner, immediate release is the proper remedy to rectify Petitioner's unlawful detention and deprivation of due process.

IV. CONCLUSION

For all the foregoing reasons, this Court should grant the instant petition for a writ of habeas corpus and order his immediate release or, if the Court disagrees with the remedy of immediate release, order the government to provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order.

Dated: December 21, 2025

Respectfully submitted,

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