UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Roberto Mandique Mejias, Petitioner, v. Sam Olson, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, 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; Scott Smith, Jail Administrator of Dodge County Jail, Respondents.	)	Case No. 2:25-CV-01998-WED **PETITIONER'S REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS**

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Roberto Mandique Mejias, Petitioner, V. Olson, et al., Respondents.	)	Case No. 2:25-cv-01998-WED

PETITIONER'S REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS

The petitioner, through his attorney Kevin P Boyle, hereby responds to the respondent's opposition to the grant of a writ of Habeas Corpus and requests that the court grant the relief as stated in the amended petition for Habeas Corpus.

INTRODUCTION

The petitioner is eligible for release because he was encountered as a noncitizen who is present within the United States, and his release is controlled by 8 USC Section §1226, INA Sec. §236. Until the government changed its interpretation of the law, all evidence in the petitioner's case demonstrated that his release was subject to Section §1226, INA Sec. §236.

The line of relevant cases that the Attorney General and the Board of Immigration Appeals have promulgated on this topic are incorrectly decided and are recently decided. *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

The long-standing interpretation of the law was that a noncitizen who is present within the United States and not an arriving alien is eligible for determination of his eligibility for release upon detention by immigration authorities. Even in this case, the government released the petitioner using 8 USC Section §1226, INA Sec. §236.

These new cases appear in 2025, and they argue that the petitioner and similarly situated noncitizens should be treated as an arriving alien who is an applicant for admission under Section §1225 if they entered without inspection, regardless of the time spent in the country. In the petitioner's case, there is no indication that he should be treated as an arriving alien under Section §1225, despite several chances for this department to treat him as an arriving alien who must be detained under Section §1225.

STATEMENT OF FACTS

This petitioner has already been released under Section §1226, INA Sec. §236. The original release under his own recognizance is justified by statute '236 of the Immigration and Nationality Act' in anticipation of his potential removal proceedings. See Updated Boyle Decl., Exhibit 2. Form I-220A Release on Recognisance. This action argues that the government at this time released the respondent in anticipation of a removal proceeding held under Section §1229a, INA Sec §240, and that these proceedings are subject to bond determination and his bond was determined at that time in 2021.

This petitioner was not served with any notification that he was subject to expedited removal proceedings as an arriving alien. The government has provided a copy of a Notice of Expedited Removal, Form I-860, that clearly shows that it was not completed and not served on

the petitioner. The government has not provided this court with any evidence that the petitioner was ordered removed, or any indication that the petitioner was going to be subject to further proceedings under Section §1225(b), INA Sec. §235(b). The government cannot continue a proceeding under expedited removal that was stopped when it has been more than two years since the petitioner's entry, and they have lost the opportunity to do so based on their inaction. Section §1225(b)(1)(A)(iii). INA Sec. §235(b)(1)(A)(iii).

The petitioner did receive evidence when he was released that he would be subject to removal proceedings under Section §1229a, INA Sec §240, and the manner of his release demonstrates such an intention. In the interim, the petitioner did not fail to act, he requested affirmative asylum protection designed for individuals who are residing in the interior of the country. See Updated Boyle Decl., Exhibit 5. Notice of Dismissal of Asylum Petition. The government was notified of this request before his time expired, and he was granted a receipt number. It was not until 2025 when the government first gave notice of any expedited removal proceedings, that there was any question that the respondent should have filed for asylum protections or if he should be in a different track to review his request for asylum protections.

The government has given the petitioner documents that begin removal proceedings under Section §1229a, INA Sec §240, and he is not categorized as an arriving alien; he is categorized as an alien who arrived without inspection. See Updated Boyle Decl., Exhibit 13. Notice To Appear. This category is exactly similar to many other examples wherein district courts have found that an alien is releasable under Section §1226, INA §236. As of this writing the attorney general has not set a hearing date for these removal proceedings, though there was one appearance on January 02, 2026, that was aborted as improvidently calendared.

The respondent will suffer disproportionately due to the slow pace of these removal proceedings, and the Immigration Court has already made a finding that could alleviate the problem of this delay by ordering the petitioner pay a bond under 8 USC Section §1226, INA Sec. §236. See Updated Boyle Decl., Exhibit 10. Order of Bond Determination. A failure to order the respondents to respect this bond order could subject the petitioner to many months in detention, at public expense, before his case is even scheduled to be heard.

ANALYSIS

The petitioner was not processed for expedited removal in 2021, and he was released before that process was completed. The government cannot recapture the two-year limit listed within Section §1225(b)(1)(A)(iii), INA §235(b)(1)(A)(iii), and re-categorize the petitioner as an arriving alien, the final date of his determination of inadmissibility was December 2025, as shown by the date of his charging documents. See Updated Boyle Decl., Exhibit 13. Notice To Appear. These charging documents make no reference to any determination of admissibility in 2021, because that determination was left incomplete. The statute seems clear at that point - a noncitizen who can show he has been in the country for more than two years at the point of being charged with removal under Section §1229a, INA §240, is no longer classified as an arriving alien.

The language in Section §1225(b)(1)(A)(iii)(II), INA §235(b)(1)(A)(iii)(II) is clear in regards to who can be interpreted as an applicant for admission. All aliens within two years of entry fall into this classification; all aliens outside of this two-year period fall out of it. (This is not true only for citizens of countries without full diplomatic relations and who arrive by aircraft, for there must always be an exception to the general rule. Section §1225(b)(1)(F)). There is no

mention of a noncitizen who arrived at a previous time and whose proceedings under the chapter were interrupted or never commenced and there is no indication in the statute Section §1225, INA §235, that the government may recapture an unfinished determination of inadmissibility. This petitioner has a date when he was charged with inadmissibility, and this is December of 2025, and he should fall outside of this two year period indicated in this statute.

The government allowed the petitioner to enter the country and did nothing for longer than two years, and now they expect their inaction to be rewarded by being able to recapture the two-year time limit found in Section §1225(b)(1)(A)(iii), INA §235(b)(1)(A)(iii). The government would like the term 'applicant for admission' to continue indefinitely for the petitioner, despite the fact that the petitioner was physically admitted, allowed to reside in Wisconsin with the knowledge of the government, and he resided in this state with no further determination of inadmissibility until the year 2025.

A different statute sheds light on when a noncitizen may have their status as an applicant for admission recaptured. Section §1182(d)(5)(A), INA §212(d)(5)(A) states explicitly that humanitarian parole may be used for release for an arriving alien, but that the return to custody is at the discretion of the government, and when that happens, the noncitizen shall be treated as any other applicant for admission.[1] A noncitizen released on Humanitarian Parole may argue that

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[1] Section §1182(d)(5), INA §212(d)(5)

(A) The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the 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 to the United States.* (Italics Added)

this is a benefit that allows them to claim permanent status, such as Cuban nationals under the Cuban Adjustment Act of 1966 (CAA), Pub. L. 89-732. This petitioner was not released under Section §1182(d)(5)(A), INA §212(d)(5)(A), Humanitarian Parole, but he was released under his recognisance with the use of Section §1226, INA §236. Under the logic of statutory construction, the choice of a different statute to grant release to a petitioner should lead to different outcomes, and if the outcome in Humanitarian Parole leads to the government being able to recapture the status of an arriving alien, the outcome of release under Section §1226, INA §236, should not lead to the same outcome. In fact, the government has not recaptured the status of arriving alien in his removal proceedings, he has been charged as an alien present without admission, demonstrating that the manner of the petitioner's release did not allow the government to automatically recapture a previous status under Section §1225. See Updated Boyle Decl., Exhibit 13. Notice To Appear.

The statute Section §1226, INA §236, may list conditional parole as an option of release, however this does not carry the same restrictions as Section §1182(d)(5)(A), INA §212(d)(5)(A). This conditional parole appears to allow the conditions of release that were imposed on the petitioner for his release on his recognisance, a list of conditions that require him to report to the respondent and to attend court hearings See Updated Boyle Decl., Exhibit 2. Form I-220A Release on Recognisance. If the Congress meant to impose the same recapturing provisions in Section §1226, INA §236, they were capable of listing all the restrictions that would come with

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(B) The Secretary of Homeland Security may not parole into the United States an alien who is a refugee unless the Secretary of Homeland Security determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title.

Section §1184(f) Deals with the treatment of crewmembers arriving at from a foreign vessel.

that manner of release, and they have listed as much in the language of other sections of the statute.

The respondent is no longer an arriving alien and he is no longer seeking to be an applicant for admission. He was seeking affirmative asylum benefits under Section §1158, INA §208, and he has reported a prima facie case of persecution by the government of Venezuela. This petitioner is not asking for a determination to be made by an immigration official at the border so that he can cross the line; he is not applying to be admitted. The petitioner is present within the country applying to have Section §1158, INA §208, be determined to correctly apply to him as a benefit in a separate chapter of the statutes.

If the petitioner is no longer treated as an arriving alien, he should then be treated similarly to a noncitizen present in the country who has not been admitted or paroled, who has been here for 20 years. In reality, a noncitizen who has been here for 20 years should really be treated as more of a scofflaw than the petitioner. That noncitizen has found a way to obscure their entry, obscure their residence in the country, and to obscure their right to work in the country for many years. This petitioner entered the country, he was released from custody under Section §1226, INA §236, and then proceeded to timely file his affirmative notice that he claimed asylum benefits. The petitioner has been able to timely follow the rules as set forth before him, under the options given to him.

This indefinite ability to recapture the classification of who is an arriving alien and therefore an applicant for admission is just what is at issue in every case of this sort; every noncitizen who entered without inspection and who has obscured their presence for more than two years has not been admitted. The government wishes to pursue a legal fiction and wishes to

treat all noncitizens who entered without inspection as if they are standing with their toes on the line of a phantom border, and they must apply to be admitted.

However, courts have argued that not being admitted is not the same as a noncitizen who seeks admission. If all uninspected noncitizens were considered to be applicants for admission, then all uninspected noncitizens would be subject to the expedited removal process found in Section §1225(b)(1), INA §235(b)(1). Congress wrote the law specifically so that the language regarding physical presence for two years would create a distinction, and they envisioned noncitizens who have been in the interior of the country to have more rights to due process than others who have not been in the country for that period of time. Interpreting all noncitizens as applicants for admission would make the limit in Section §1225(b)(1)(A)(iii)(II), INA §235(b)(1)(A)(iii)(II) superfluous, and Congress's intention in making a distinction in recent entrants and others who have been in this country for longer would be disregarded.

A noncitizen who is treated as any other who entered without inspection has the right to a determination of whether they should be released under Section §1226, INA §236. This is quickly becoming precedent in the 7th Circuit, and it was directly addressed in the interim order for temporary relief in *Castanon Nava v. Department of Homeland Security*, No. 25-3050 (7th Cir., December 18, 2025). The relevant part of the decision and the relevant footnote are reproduced below:

> 'The question is whether § 1225(b)(2)(A) covers any noncitizen who is unlawfully already in the United States as well as those who present themselves at its borders. For their part, Plaintiffs highlight a host of cases where courts have held that ICE's authority to detain a noncitizen discovered within the country

derives from § 1226(a) and not from § 1225(b). See 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."); see , e.g., *Corona Diaz v. Olson*, No. 25-CV-12141, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025). Based upon the text and structure of the two provisions, we believe that Plaintiffs have the better argument on the current record. That's because § 1225(a)(1) defines an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). And while a noncitizen arrested in the Midwest might qualify as "an alien present in the United States who had not been admitted," § 1225(a)(1), the mandatory detention provision upon which Defendants rely, limits its scope to an "applicant for admission" who is "seeking admission," § 1225(b)(2)(A). Put another way, "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). Accordingly, given the factual record before us, we conclude that Defendants are not likely to succeed on the merits of their argument that those individuals, whom ICE arrested in Chicago without a warrant, are subject to mandatory detention under § 1225(b)(2)(A).

Defendants disagree. In their view, an "applicant for admission" is synonymous with a person "seeking admission" because, as they put it, one cannot apply for something without also seeking it. And, admittedly, this argument has some superficial appeal. After all, a person does not apply for something they are not seeking. Moreover, § 1225(a)(3), which Defendants point to, refers to noncitizens "who are applicants for admission or otherwise seeking admission," 8 U.S.C. § 1225(a)(3) (emphasis added), suggesting that "applicants for admission" are those "seeking admission." But it is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an "applicant for admission" to "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). It could easily have included noncitizens who are "seeking admission" within the definition but elected not to do so. What is more, Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase "seeking admission" superfluous, violating one of the cardinal rules of statutory construction. See United States ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."). Indeed, as the Supreme Court reminds us, if an interpretation of one provision "would render another provision superfluous, courts presume that interpretation is incorrect." Bilski v. Kappos, 561 U.S. 593, 607–08 (2010). And this presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme," as would be the case here. Marx v. Gen. Rev. Corp., 568 U.S. 371, 386 (2013).

Furthermore, the difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration

law. Indeed, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." Zadvydas v. Davis, 533 U.S. 678, 693 (2001); Leng May Ma v. Barber, 357 U.S. 185, 187 (1958). ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.").13

FN13 It also does not escape our notice that Defendants' recent reliance on § 1225(b)(2)(A) to detain noncitizens discovered within the United States upends decades of practice. "Before July 8, 2025, DHS's long-standing interpretation had been that § 1226(a) applied to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Hasan, 2025 WL 2682255, at *9 (citation modified). Mandatory detention of all persons illegally in the United States only became official DHS policy when Acting Director of ICE Todd M. Lyons issued an internal memorandum on July 8, 2025, explaining that the agency "revisited its legal position" on the applicability of §§ 1225(b) and 1226(a). Id. (citation omitted).

Castanon Slip Op., p19-21. (December 18, 2025)

There is no legal basis to classify the petitioner as an arriving alien subject to mandatory detention under Section §1225, INA §235. The government did not interpret the law this way in 2021, and they did not take advantage of the opportunity in 2025 to charge the petitioner as an arriving alien when they determined his inadmissibility in December. See Updated Boyle Decl., Exhibit 13. Notice To Appear.

Even if we accept, for the purpose of this argument, that the petitioner should have been classified as an arriving alien in 2021 and he should have been subject to mandatory detention, he wasn't subject to mandatory detention; he was released with Section §1226, INA §236, as the stated basis. See Updated Boyle Decl., Exhibit 2. Form I-220A Release on Recognisance. The procedure was undone and the petitioner was not subject to expedited removal, as a factual matter, the process he encountered did not remove him in an expedited manner. This petitioner was re-encountered in 2025 and the decision to detain him was made, with a warrant issued under 'Section 236 of the Immigration and Nationality Act.' See Updated Boyle Decl., Exhibit 7. Warrant for Arrest of Petitioner. If there was an error in the process in 2021, it needed to be resolved by beginning the process again, which was accomplished only in December 2025.

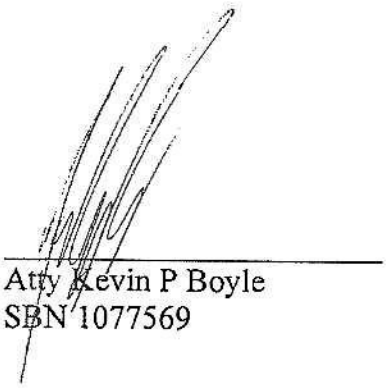
Even if we accept, for the purpose of this argument, that the petitioner should have been subject to expedited removal proceedings in 2025, after his existence in the country for more than two years and upon his arrest in the interior of the country, he is no longer within expedited removal proceedings. He is in Section §1229a, INA §240, proceedings, and he is charged as an alien present in the country without admission. See Updated Boyle Decl., Exhibit 13. Notice To Appear. The respondents would have a much better case if their own officer had decided that it was appropriate to charge the petitioner as an arriving alien, but they did not do this. An alien in Section §1229a. INA §240, proceedings, and charged as an alien present in the country without admission, has always been subject to the provisions of detention as outlined in Section §1226, INA §236.

CONCLUSION

There is a dividing line where this petitioner would have been subject to the strictures of Section §1225, and this was while Section §1225(b)(1)(A)(iii), INA §235(b)(1)(A)(iii), could have applied to him, up to October 2023. The government did not take advantage of this before the time limit, they did not start proceedings until December 2025, which is 4 years after the date the petitioner entered the country. The officer who created the Notice to Appear, under Section §1229, INA §239, recognized this fact and did not charge the petitioner as an arriving alien, rather he was charged as an "alien present in the United States who has not been admitted or paroled." See Updated Boyle Decl., Exhibit 13. Notice To Appear. Section §1225 is replete with references to arriving aliens, it deals with expedited removal for arriving aliens, it sets a limit to when the attorney general can classify noncitizens as arriving aliens, when a noncitizen arrives at the border is when Section §1225 mandatory detention can apply to a person. Recapture of this status is only possible when Congress specifically designed it to happen, up to two years of physical presence in the country, or if the noncitizen was granted the benefits of INA 212(d)(5)(A) humanitarian parole, and this benefit is revoked. Neither of these conditions applies to the petitioner, and this case is replete with evidence from many different decision makers that the petitioner is not an applicant for admission or an arriving alien, but he is an alien present in this country who has not been admitted. A noncitizen encountered inside the country, such as the petitioner, is not covered by Section §1225 but by Section §1226, and he is eligible for a bond determination.

WHEREFORE, the petitioner requests that the court find that the Writ of Habeas Corpus is appropriate and sustain the claims made in the Petition and order that the respondents release the petitioner pursuant to the order for bond issued by the Immigration Judge.

Signed this 16th day of January, 2026.



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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, I electronically filed the foregoing Petitioner's Reply in Support of Habeas Corpus, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties shall be served in accordance with the Federal Rules of Civil Procedure.

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