UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GENDRI ORTIZ PAREDES,

Petitioner,

v.

KENNETH GENALO, NYC Director for Enforcement & Removal Operations Immigration and Customs Enforcement; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General, US Department of Justice; and WARDEN, Broom Detention Facility, Binghamton New York,

Respondents.

Civil Action No.
9:26-cv-324 (MAD)

RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS

TODD BLANCHE
Deputy Attorney General

JOHN A. SARCONE III
First Assistant United States Attorney
Northern District of New York

KAREN FOLSTER LESPERANCE
Assistant United States Attorney
Attorneys for Respondents

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

FACTUAL BACKGROUND 1

STATUTORY BACKGROUND 3

ARGUMENT 4

I. ICE lawfully detained Paredes pursuant to 8 U.S.C. § 1226(c) 4

II. Peredes' detention under Section 1226(c) comports with procedural due process 6

III. Petitioner Does Not State a Claim Under the Administrative Procedure Act 8

CONCLUSION 8

TABLE OF AUTHORITIES

Cases

Bazile v. Garland, No. 20-CV-1819 JLS, 2021 WL 9455715 (W.D.N.Y. July 1, 2021) 7

Black v. Decker, 103 F.4th 133 (2d Cir. 2024) ..... passim

Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026) 3, 5, 6

Contreras Blanco v. Garland, No. 21-CV-172-LJV, 2021 WL 3667201 (W.D.N.Y. Aug. 18, 2021) 7

De Oliveira Jimenez v. Searls, No. 22-CV-960 (JLS), 2023 WL 11134381 (W.D.N.Y. Mar. 2, 2023) 6

Demore, 538 U.S. at 514 ..... 5, 6

Frederick v. Feeley, No. 19-CV-6090-FPG, 2019 WL 1959485 (W.D.N.Y. May 2, 2019) 7

Gabriel v. Immigr. & Custom Enf't, No. 08-CV-6178(CJS)(VEB), 2009 WL 1272291, (W.D.N.Y. Feb. 23, 2009), *report and recommendation adopted*, 2009 WL 2413674 (W.D.N.Y. Aug. 4, 2009) 7

Heikkila v. Barber, 345 U.S. 229, 234-35 (1953) 8

Jennings v. Rodriguez, 583 U.S. 281, 306 (2018) 4, 6

Lucce v. Freden, No. 25-CV-6342-MAV, 2025 WL 3214485 (W.D.N.Y. Nov. 18, 2025) 6

Mitchell v. Wolf, No. 20-CV-1183 (JLS), 2021 WL 1516450 (W.D.N.Y. Apr. 15, 2021) 7

Tam v. Dep't of Homeland Sec., No. 05-CV-473S, 2006 WL 839425 (W.D.N.Y. Mar. 28, 2006) 7

Trump v. J.G.G., 145 S. Ct. 1003, 1005 (2025) 8

Zadvydas v. Davis, 533 U.S. 678, 701 (2001) 6,7

Statutes

5 U.S.C. § 704 8

5 U.S.C. § 706(2) 8

8 U.S.C. § 1182(a) 3, 4

8 U.S.C. § 1182(d) 3

8 U.S.C. § 1225(b) 5

8 U.S.C. § 1226 3

8 U.S.C. § 1226(a) 3, 5, 6

8 U.S.C. § 1226(c) ..... passim

Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025) 3

Regulations

8 C.F.R. § 1003.19 3

8 C.F.R. § 1236.1(d) 3

8 C.F.R. § 236.1(c) 3

8 C.F.R. § 236.1(d) 3

PRELIMINARY STATEMENT

The Department of Homeland Security ("DHS") detained Petitioner Gendri Ortiz Paredes shortly after he was charged with petit larceny following three separate shoplifting incidents. Congress recently amended 8 U.S.C. § 1226(c) to require immigration detention for a noncitizen who is inadmissible and arrested or charged with a crime of theft. 8 U.S.C. § 1226(c)(1)(E). The amended statute does not require a pre-detention hearing and mandates prompt detention of noncitizens that fall within its purview. Accordingly, U.S. Immigration and Customs Enforcement ("ICE") lawfully detained Paredes.

Accordingly, the Government respectfully requests that this Court deny Paredes' Petition for Writ of Habeas Corpus.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole and was encountered by U.S. Border Patrol agents on March 9, 2024. Declaration of Joseph Amoia ("Amoia Decl.") at ¶ 4.

At the Eagle Pass Border Patrol station, agents learned that Paredes was 17 years old. *Id.* at ¶ 5. Petitioner was processed as an Unaccompanied Alien Child. *Id.* at ¶ 5 & Ex. A at 10, 13-17. Petitioner was served with, *inter alia*, a Form I-862 Notice to Appear and the Form I-200 Warrant for Arrest of Alien. *Id.* ¶ 5 & Ex. A at 1-4. The Notice to Appear charges Petitioner under Immigration and Nationality Act (INA) § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at ¶ 5 & Ex. A at 1. This Notice to Appear was not filed with the immigration court. *Id.* ¶ 5.

Petitioner was then transferred to the custody of the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR). *Id.* at ¶ 6. On March 29, 2024, ORR released Paredes on his own recognizance to the custody of this mother in Roosevelt, New York. *Id.* at ¶ 6 & Ex. A at 18.

On September 12, 2024, DHS issued Parades a second Notice to Appear in immigration court. *Id.* ¶ 7 & Ex. A at 19-21. This notice to appear was filed with the immigration court. *Id.* ¶ 7. On or about November 13, 2024, Petitioner filed with United States Citizenship and Immigration Services (USCIS) a Form I-589, Application for Asylum and for Withholding of Removal. *Id.* at ¶ 8. On or about October 24, 2025, Petitioner filed with USCIS a Form I-360, Petition for Special Immigrant Juvenile. *Id.* On or about March 3, 2026, ICE referred Petitioner to USCIS for potential adjudication of the Form I-589 he filed with USCIS due to his potential status as a *J.O.P v. DHS* class member. *Id.*

According to information provided to ICE by the Nassau County Police Department (NCPD), Petitioner was arrested by the NCPD on October 25, 2025 on three counts of Petit Larceny, for three separate shoplifting incidents that occurred at Dick's Sporting Goods in Garden City, New York. *Id.* at ¶ 9 & Ex. A at 27-29, 32-28

At the time of Petitioner's arrest, NCPD contacted ICE, who confirmed that Petitioner was currently in removal proceedings and had previously been released on his own recognizance. *Id.* at ¶ 10 & Ex. A at 28. DHS executed and served on Petitioner a Form I-200, Warrant for Arrest of Alien. *Id.* at ¶ 10 & Ex. A at 22-26. Petitioner was transferred from the custody of the NCPD to ICE's custody that evening. *Id.* at ¶ 10 & Ex. A at 28. ICE's Enforcement and Removal Operations New York City Field Office made an Initial Custody Determination that Petitioner was to be detained, as he was not subject to INA § 236(a). *Id.* at ¶ 10 & Ex. A at 30

On or about October 26, 20252, Parades was transferred to the Broome County Jail in Binghamton, New York, where he is currently detained in ICE's custody. *Id.* at ¶ 11. He filed the instant Petition for Writ of Habeas Corpus on February 27, 2026. ECF 4.

STATUTORY BACKGROUND

Section 236 of the INA, 8 U.S.C. § 1226, which is applicable to aliens in general, provides that, "[o]n 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." 8 U.S.C. § 1226(a). 8 U.S.C. § 1226(a)(2)(A) permits, but does not require, the Attorney General to release detained aliens on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." *Id.* *See also* 8 C.F.R. § 236.1(c)(8), (d), 1236.1(d) (1), 1003.19. But not all aliens detained under § 1226(a) are eligible for release on bond. If an alien has committed one of the criminal offenses enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)–(E). The Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility for bond. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025). Aside from being ineligible for bond, aliens covered by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A). *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 505 (5th Cir. 2026) (providing that INA § 236(c) "eliminates the option of parole for those to whom it applies").

As amended by the Laken Riley Act, section 1226(c) provides that "[t]he Attorney General ***shall take into custody*** any alien who . . . (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime

that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E) (emphasis added). The Laken Riley Act further provides that if the alien is not already in federal, state, or local custody, DHS "***shall effectively and expeditiously take custody of the alien.***" *Id.* § 1226(c)(3) (emphasis added).

ARGUMENT

Because Paredes was arrested for and charged with one of the crimes enumerated in the Laken Riley Act, his detention is statutorily mandated and comports with due process. This Court should therefore deny this habeas petition.

I. ICE lawfully detained Paredes pursuant to 8 U.S.C. § 1226(c).

Because Paredes fits squarely within the Laken Riley Act, his detention without a bond hearing was statutorily mandated. As an "alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General," he is inadmissible under paragraph (6)(A) of section 1182(a). This satisfies the first prong of the Laken Riley Act. 8 U.S.C § 1226(c)(1)(E)(i). And he was arrested and charged by Information with three counts of petit larceny for three separate shoplifting incidents.[1] Larceny and shoplifting are each enumerated crimes under the second prong of the Laken Riley Act. 8 U.S.C. § 1226(c)(1)(E)(ii). As such, Petitioner falls with section 1226(c), as amended. His detention is therefore mandatory and may end prior to the conclusion of removal proceedings "only if [he] is released for witness-protection purposes." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (internal quotation marks and citations omitted). *See also* 8 U.S.C. § 1226(c)(4); *Black v.*

---

[1] To the extent Paredes contends that his October 2025 arrest by the NCPD was "illegal," petition at ¶ 11, ECF 4 at 3, that is not a claim that may properly be brought as part of a habeas petition. And Paredes cites not cites no facts to support this conclusory assertion.

Decker, 103 F.4th 133, 141 (2d Cir. 2024).

The Petition does not acknowledge or address Section 1226(c) or the Laken Riley Act, instead asserting that Paredes is being detained without bond pursuant to "a new government policy announced on July 8, 2025." Petition ¶ 7, ECF 4 at 3. He does so presumably to avail himself of prior decisions of this Court and others rejecting the government's position that all noncitizens who entered the United States without inspection or parole are subject to mandatory detention under 8 U.S.C. § 1225(b). *See* Petition at ¶ 2, ECF 4 at 2. While the government maintains that § 1225(b) provides for mandatory detention of all aliens who enter without inspection,[2] that question is not relevant to Paredes' detention under Section 1226(c), and the Court need not consider it with respect to the instant habeas petition. *See Demore*, 538 U.S. at 517-18 ("Section 1226(c) mandates detention during removal proceedings for a limited class of deportable aliens"). *See also Black v. Decker*, 103 F.4th at 140-41 (noting that unlike the "default rule" of

---

[2] The government acknowledges that the presiding judge in this case recently reached the opposite conclusion, *see, e.g., Martins v. Akshar*, 9:26-cv-0095 (MAD) (Feb. 3, 2026); *Noguez v. Brophy*, 9:26-cv-00030 (Feb. 13, 2026) (MAD), as have the other Northern District of New York judges who have ruled on the issue. The government likewise acknowledges that the prevailing weight of district court authority rejects the Government's interpretation of its statutory detention authority under § 1225(b)(2)(A) as opposed to § 1226, *see, e.g., Cardenas v. Almodovar*, No. 25 Civ. 9169, 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025) (surveying cases and noting "scores of decisions—in this Circuit and beyond—on the Section 1226(a) side of the split").

However, on February 6, 2026, the Fifth Circuit issued its decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), in which the majority adopted the Government's interpretation of its statutory detention authority under § 1225(b)(2)(A). It held that § 1225(b)(2) authorizes the mandatory detention of noncitizens who entered the United States unlawfully several years ago without being admitted and who were subsequently apprehended within the interior of the United States. *See id.*

The Second Circuit has not yet weighed in on this issue, although it is poised to, *see Barbosa da Cunha v. Moniz*, 2d Cir. No. 25-3141.

section 1226(a), "[u]nder section 1226(c), however, noncitizens who have committed one of certain listed offenses . . . .are subject to mandatory detention."); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499–500 (5th Cir. 2026) ("If an alien has committed one of the criminal offenses enumerated in § 1226(c), he loses his bond eligibility.").

II. Peredes' detention under Section 1226(c) comports with procedural due process.

The Second Circuit has made clear that "due process does not require an *initial* bond determination for those detained under section 1226(c)." *Black*, 103 F.4th at 142 (emphasis in original) (citing *Demore*, 538 U.S. at 514, 530-31; *Jennings,* 583 U.S. at 296-97, 311-12). Nor is a bond hearing required "after some predetermined period of detention." *Id.* Indeed, the Supreme Court in *Jennings* rejected the Ninth's Circuit imposition of a six-month "cap" to detention without bond hearing under section 1226(c), finding "no justification for" such a time limit. *Id.* (quoting *Jennings*, 583 U.S. at 296-97, 311-12).

While the Second Circuit in *Black* did conclude that at some point due process will preclude "prolonged detention," *id.* at 143, there is no bright line rule as to when section 1226(c) detention becomes "prolonged." However, the Supreme Court has found that detention of less than six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's confinement is currently presumptively reasonable under *Zadvydas*, and Petitioner has done nothing to rebut that presumption.

As a result, Petitioner's due process claim is premature under the framework set forth in *Zadvydas*. *See, e.g.*, *Lucce v. Freden*, No. 25-CV-6342-MAV, 2025 WL 3214485, at *3 (W.D.N.Y. Nov. 18, 2025) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *De Oliveira Jimenez v. Searls*, No. 22-CV-960 (JLS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (dismissing petition as premature where petitioner was detained under

§ 1231 for under two months); *Mitchell v. Wolf*, No. 20-CV-1183 (JLS), 2021 WL 1516450, at *4–6 (W.D.N.Y. Apr. 15, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under six months); *Contreras Blanco v. Garland*, No. 21-CV-172-LJV, 2021 WL 3667201, at *2 (W.D.N.Y. Aug. 18, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *Bazile v. Garland*, No. 20-CV-1819 JLS, 2021 WL 9455715, at *3 (W.D.N.Y. July 1, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *Frederick v. Feeley*, No. 19-CV-6090-FPG, 2019 WL 1959485, at *4 (W.D.N.Y. May 2, 2019) (dismissing petition as premature when the petitioner "ha[d] not been detained beyond the presumptively reasonable period of detention").

After six months of detention, release is not automatic for due process purposes, either. The Supreme Court explained Petitioner can only shift the burden to the government, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," at which time "the [g]overnment must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. Because Petitioner's due process claim is premature, the Court need not determine the likelihood of her removal in the reasonably foreseeable future. *See Gabriel v. Immigr. & Custom Enf't*, No. 08-CV-6178(CJS)(VEB), 2009 WL 1272291, at *4 (W.D.N.Y. Feb. 23, 2009), *report and recommendation adopted*, 2009 WL 2413674 (W.D.N.Y. Aug. 4, 2009) ("[C]ourts in this district have concluded that an analysis of whether the petitioner will be repatriated in the reasonably foreseeable future is not required because the petitioner's period of confinement had not yet exceeded that deemed presumptively reasonable by the Supreme Court."); *Tam v. Dep't of Homeland Sec.*, No. 05-CV-473S, 2006 WL 839425, at *2 (W.D.N.Y. Mar. 28, 2006) ("This case does not require an analysis of whether petitioner will be repatriated in the reasonably foreseeable future because petitioner's period of confinement has not

yet exceeded that deemed presumptively reasonable by the Supreme Court.").

As such, Petitioner has not established that his mandatory detention under Section 1226(c) has become so prolonged as to become constitutionally unreasonable.

III. Petitioner Does Not State a Claim Under the Administrative Procedure Act.

Petitioner claims that his detention violates the Administrative Procedure Act (APA), 5 U.S.C. § 706(2). *See* Petition Claim One, ECF 4 at 5. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

CONCLUSION

Accordingly, the Government requests the Court dismiss and deny the Petition.

Dated: March 12, 2026

TODD BLANCHE
Deputy Attorney General

JOHN A. SARCONE III
First Assistant United States Attorney

By: _____
Karen Folster Lesperance
Assistant United States Attorney
Bar Roll No. 514108