UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

GENAURIS JOSE ARIAS LARA Petitioner, v. WARDEN, FCI-BERLIN, ET AL., Respondents.	**Case No: 1:25-CV-229-LM-AJ**

PETITIONER'S REPLY TO RESPONDENTS' OBJECTION TO PETITIONER'S FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Genauris Jose Arias Lara (Mr. Arias) hereby replies to the Respondents' Objection to his First Amended Petition for Writ of Habeas Corpus.

INTRODUCTION

Mr. Arias was allowed to enter the United States in 2024 to apply for asylum after an Immigration Judge determined he had a credible fear of persecution in his home country. That entry, though it itself did not confer on Mr. Arias any permanent immigration status, did two critical things. First, it allowed Mr. Arias past the United States border and thus plainly removed him from the purview of section 235(b)'s mandatory detention scheme under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b), which only applies to those noncitizens who are seeking entry to the United States in the first instance. From that point forward, Mr. Arias's custody status has been governed by the discretionary detention scheme of section 236(a), 8 U.S.C. § 1226(a). Second, this entry allowed Mr. Arias to accrue due process liberty interests that protect him from arbitrary detention regardless of which statutory detention scheme controls.

For seven months after his release, Mr. Arias lived with his family in Massachusetts and followed all the rules. He did absolutely nothing wrong, and he was not due to go before an

Immigration Judge again until September of 2025, but that didn't matter to Immigration and Customs Enforcement (ICE). Last March, Mr. Arias and his brother were unexpectedly pulled over by federal officers and they were handed over to ICE. He was detained for nearly three months, far from his family, and the only reason he was given for this detention was simply because 'there was a new sheriff in town.' He was not arrested because of any violation of the conditions of his release or because of any change in his removal status; he was taken purely because the Government with its new marching orders decided it could, and that was reason enough. The Government only released him when Mr. Arias filed for *habeas corpus* before this Court.

But this is not where the story ends. The Government has not once stated that it did anything wrong or that this egregious conduct won't happen again; it has said the opposite. In their Objection, Respondents insist that even now they are permitted to re-detain Mr. Arias at any time, and for any reason, at their sole and complete discretion. Nothing could be more arbitrary. It is the very definition of unlawful custody. That the Government claims to hold this incredible, omnipotent authority over Mr. Arias's liberty, under the auspices of a statutory scheme that numerous courts have rejected as authorizing such power over persons in Mr. Arias's circumstances, is the definition of a live controversy. This Court had jurisdiction when Mr. Arias first filed his Petition and it has jurisdiction now to determine the lawfulness of the Government's conduct and to provide him appropriate relief that will protect him against such a flagrant violation of the law.

ARGUMENT

Respondents unapologetically state that Mr. Arias's custody is controlled by section 1225(b)(1) and that any parole from that custody "is entirely within the discretion of ICE and can

be terminated at any time and for any reason." Resp'ts' Obj. to First Am. Pet. ("Resp'ts' Obj."), ECF 16, at p. 8. More than that, they state that the parole they claim applies to him already expired. *See id.* Despite this, they wish the Court to believe that Mr. Arias's risk of re-detention is nothing more than speculation. They argue that Mr. Arias must prove with specific facts that he will be detained again when the very basis for his earlier detention was not specific to him at all and when the policy which precipitated that detention has not changed.

The law does not require that Mr. Arias wait for his injury to be proof-certain before he obtains relief. The Government has admitted plainly that it believes it has full authority to re-detain Mr. Arias at its mercy, and his Amended Petition seeks to prevent this from happening. The only surety Mr. Arias will have against this re-detention is (1) if the Court enters an order which clearly states which statutory authority controls his custody and (2) if it grants an injunction which enjoins the Government from re-detaining Mr. Arias unless it makes an individualized determination that changed circumstances now make him either a danger or a flight risk. Under the equitable authority permitted by the habeas statutes, this Court is fully empowered to order that relief. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636, 656 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances").

I. Mr. Arias is subject to section 1226(a) and under the law, he cannot be re-detained without a material change in his individual circumstances that makes him a danger or a flight risk.

Despite the custody determination notices the Government issued Mr. Arias in 2024 and 2025 and despite the warrant of arrest[1]—all of which invoke the authority of section 1226—the

[1] *See* First Am. Pet., ECF 15, at ¶¶ 30, 37-38, Pet. Exhs. 4-6, ECF 15-1.

Government maintains that Mr. Arias is subject to 1225(b) detention. He is not. Mr. Arias entered the United States in 2024 and this inescapable fact subjects him squarely to the scope and requirements of section 1226(a).

The amassing consensus among the federal courts is that section 1226(a) applies to noncitizens in removal proceedings who are detained in the interior.[2] *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 288-89, 303 (2018); *Romero v. Hyde*, Civ. No. 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 at 487 (S.D.N.Y. 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). This is so even when the noncitizen was originally detained upon their arrival in the United States. *See id.* In contrast, mandatory detention under 1225(b) is generally reserved for arriving noncitizens seeking entry. *See Jimenez v. FCI Berlin, Warden, et al.*, 799 F. Supp. 3d 59, 65 (D. N.H. 2025). Specifically, section 1225(b)(1) applies to arriving noncitizens and 1225(b)(2) to applicants for admission who are "seeking admission" and who are found during an inspection to be inadmissible. *Id.* at 66. The argument flows not just from historical practice but from a plain reading of the statutory language in the context of the INA as a whole. *Id.* at 69-73; *see also Campbell v. Almodovar*, Civ. No. 25-09509-JLR, 2025 WL 3538351, at *7 (S.D.N.Y. Dec. 10, 2025).

Mr. Arias, arrested as he was after seven months of living in the United States free from detention, can neither be said to have been arriving in the United States nor "seeking" admission, then or now, and so 1225(b) does not apply to him. *See Jimenez*, 799 F. Supp. 3d at 68

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[2] Prior to 2025, it was the Government's own long-standing position that 1226(a) was the applicable statutory authority for such persons. In the wake of the Government's abrupt change in policy, *see* n. 6, *infra*, many federal courts have now had occasion to reexamine the issue.

(petitioner no longer "arriving" when he had been living in the United States for nearly two years); *Campbell*, 2025 WL 3538351, at *6, *8 (petitioner no longer "seeking admission" four years after paroled entry). Instead, it is 1226(a) that must govern, and under that framework, the Government is prohibited from re-detaining Mr. Arias unless it makes a determination that there has been a material change in his individual circumstances which now warrants his detention. *See* 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). The only change in circumstances which could justify such re-detention—the only change which would be "material"—is if Mr. Arias had become either a danger to the community or a flight risk from his immigration proceedings.[3] *See Hernandez-Lara v. Lyons*, 10 F. 4th 19, 32-33, 36 (1st Cir. 2021); *dos Santos v. Noem*, Civ. No. 25-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025). Any re-detention of Mr. Arias in the absence of such a determination violates 1226(a).

The Government tries to sidestep this by asserting that because of its original parole notice, section 1225(b)(1) continues to govern Mr. Arias's detention. This argument is flawed from the outset. Section 1225(b)(1) only authorizes mandatory detention "for noncitizens arriving in the United States during the pendency of expedited removal proceedings and the credible fear interview and review process." *Jimenez*, 799 F. Supp. 3d at 68-69. As with the petitioner in *Jimenez*, Mr. Arias is not in expedited removal proceedings but standard removal proceedings. *See id.* at 69; First Am. Pet., ECF 15, at ¶ 28. The Government's reliance on 1225(b)(1)(B)(ii) is misplaced. This provision only applies if the immigration officer determines *at the time of the credible fear interview* that the noncitizen has a credible fear of persecution. 8

[3] This is because ICE, when it chose to release Mr. Arias in 2024, already necessarily determined that he posed neither a danger nor a flight risk. *See* First Am. Pet., ECF 15, at ¶¶ 30-33.

U.S.C. § 1225(b)(1)(B)(ii); *Jimenez*, 799 F. Supp. 3d at 69. "To the contrary, the asylum officer found that [Mr. Arias] lacked a credible fear of persecution," which Mr. Arias successfully appealed to an immigration judge pursuant to 1225(b)(1)(B)(iii). *Id.*; First Am. Pet., ECF 15, at ¶ 27.[4] Contrary to the Government's claims, section 1225(b)(1) simply cannot govern Mr. Arias's custody status at this stage.

Respondents' attempt to distinguish this case from that of the petitioner in *Jimenez* is unavailing. They assert that this case is somehow different because Mr. Arias "was released under ICE's discretionary parole authority, on notice that his parole could be terminated at any time at the agency's discretion." *See* Resp'ts' Obj., ECF 16, at n. 4. In other words, the Government asserts that it has full discretion over Mr. Arias's liberty because the Government said that it does, and because it put him on notice that it said as much. This reasoning is circular at best. Moreover, it misses the point that the parole authority they cite *only applies* when the noncitizen is subject to 1225(b) detention in the first place. The issuance of the interim parole notice to Mr. Arias in 2024 cannot bootstrap the Government's detention authority where it is otherwise lacking.

As the vast majority of federal courts have held, including this one, section 1226(a) is the authority which governs a noncitizen's custody status once that individual has entered the United States and they are later detained well within our borders. The Court should grant Mr. Arias's Amended Petition on this basis.

II. Even if Mr. Arias was subject to 1225(b), he could not be arbitrarily re-detained at ICE's unfettered discretion without running afoul of Due Process.

[4] This provision itself only mandates detention if, at the conclusion of the review process, the noncitizen is still found to lack a credible fear, a circumstance not applicable here. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

All persons within the United States are protected by Due Process, and where Due Process applies, the law is clear: arbitrary detention—that is, a deprivation of a fundamental liberty for any or no reason at all—is not allowed. *See Hernandez-Lara*, 10 F. 4th at 27-28; *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

Again, courts have repeatedly held that a crucial distinction exists between noncitizens arriving at the United States and those already present within its borders. *See Zadvydas*, 533 U.S. at 693. This is because arriving noncitizens seeking admission to the country only have the due process rights which Congress affords them in its plenary power over who is entitled to admission. *See Destino v. FCI Berlin, Warden, et al.*, Civ. No. 25-374-SE-AJ, 2025 WL 4010424, at *5 (D. N.H. Dec. 24, 2025). This is a necessary function of the sovereign, but our jurisprudence stops short of reading every provision of our immigration laws as necessarily implicating this "sovereign prerogative." *See id.* at *7. Outside of the admission context, due process liberty interests accrue regardless of any "statutory allowances," and this includes the detention scheme of 1225(b). *See id.* When a noncitizen has been paroled into the United States, even under the temporary humanitarian parole authority, the court is not allowed to ignore the liberty interests that have subsequently flowed from that permitted entry. *See id.* at *6-9 (finding paroled petitioner had substantial liberty interests and his detention without an individualized bond hearing violated due process, notwithstanding 1225(b)'s mandate).

As with the petitioner in *Destino*, so it would be for Mr. Arias. Having already been permitted to live in the United States at liberty, in proximity to his family and friends, Mr. Arias has a substantial liberty interest in his continued freedom while his removal proceedings remain pending. *See Destino*, 2025 WL 4010424, at *11 (finding "the liberty interest in this case is

particularly strong because [petitioner] was previously paroled" and "[c]ourts have repeatedly recognized that an individual already enjoying certain forms of conditional release has a protected liberty interest in retaining them"). Against this weighty liberty interest, the Government's interest in his unreasoned detention, unmoored from any finding of dangerousness or flight risk, is low and the risk of erroneous deprivation impermissibly high. *See id.* at *12-*14; *see also Hernandez-Lara*, 10 F. 4th at 33 ("unnecessary detention imposes substantial societal costs," "separates families," and "removes from the community breadwinners, caregivers, parents, siblings and employees"). Thus, even if the Government were correct and 1225(b) controlled Mr. Arias's custody, his due process rights could not be left to the Government's pure discretion as Respondents claim. *See Destino*, 2025 WL 4010424, at *13 (discretionary parole authority under § 1182(d)(5)(A) insufficient in absence of a bond hearing).

III. The Government cannot hide behind a scattershot of inapplicable procedural bars in the hopes of thwarting Mr. Arias's requested relief.

a. This Court has jurisdiction because Mr. Arias remains in custody.

The Government's first argument for dismissing this Petition is that Mr. Arias is not in "custody," and therefore this Court has no jurisdiction under our habeas laws to consider his Amended Petition. This is wrong because Mr. Arias *is* in custody, though the confines of that custody have changed since his original petition. As Respondents concede, the custody requirement for habeas relief does not require present incarceration. In fact, the Supreme Court has held on numerous occasions that relief is warranted for less. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1962) (custody requirement satisfied where petitioner was on parole); *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 349-51 (1973) (requirement satisfied where petitioner was released on personal recognizance pending

execution of sentence); *Justices of the Boston Municipal Court v. Lydon*, 466 U.S. 294, 301 (1984) (requirement satisfied where petitioner was released on personal recognizance pending trial).

Each of these are parallels to Mr. Arias's current circumstances. The Government is claiming that Mr. Arias is expressly subject to 1225(b) mandatory detention. Although it makes much of the fact that Mr. Arias was released last June "without any conditions," Resp'ts' Obj., ECF 16, at p. 3, the Government flatly admits that it also believes it has the authority to re-detain Mr. Arias "at any time and for any reason." Resp'ts' Obj., ECF 16, at p. 8. This misses the forest for the trees. Plainly, liberty conditioned on the Government's benevolent discretion, absent any guidelines or backstops, is a restraint "not shared by the public generally." *See Lefkowitz v. Fair*, 816 F. 2d 17, 19 (1st Cir. 1987) (quoting *Jones*, 371 U.S. at 240). In truth, it is a restriction not shared by most. *See Jones*, 371 U.S. at 242 (parolee only subject to reincarceration for violation of parole conditions).

b. Respondents have failed to meet their burden that this Amended Petition is moot and that even if moot the voluntary cessation exception to mootness does not apply.

The Government next claims that even if jurisdiction once existed because Mr. Arias originally filed his Petition from behind bars, his Petition is now moot because of his release from the detention facility. This argument is wrong twice over. As stated above, Mr. Arias remains in custody sufficient for habeas relief, but even if he did not, the voluntary cessation exception to mootness patently applies to this case. *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000) ("It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice") (internal quotations omitted). It was only once

Mr. Arias filed his original petition, and this Court took prompt notice and ordered a status conference to be held in a matter of days, that ICE relented and released Mr. Arias from detention. *See* First Am. Pet., ECF 15, at ¶¶ 42-43; Notice of Video Hearing, entered June 13, 2025. In doing so, the Government did not say it had made a mistake. Quite the contrary, it has maintained at all times through this litigation that it was acting lawfully. Resp'ts' Obj., ECF 16, at p. 7-8 ("The Immigration and Nationality Act [ ] mandates that noncitizens in [Mr. Arias's] position '*shall* be detained…'" and "should Petitioner be detained in the future, the authority for that detention derives from 8 U.S.C. § 1225(b)(1)").

This is precisely why the voluntary cessation exception exists. The doctrine recognizes that a defendant's temporary capitulation to a plaintiff's requested relief might appear to moot the case, for the very *purpose* of mooting the case. *See Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024); *Boston Bit Labs, Inc. v. Baker*, 11 F. 4th 3, 10 (1st Cir. 2021). For this reason, the doctrine places the burden on the party claiming mootness to prove that the exception does not apply, and that burden is "formidable." *Friends*, 528 U.S. at 190. This means it is not enough that the Government released Mr. Arias from detention; it must offer more than that. The Government must clearly show that there is "no reasonable expectation" that its conduct will be repeated. *Fikre*, 601 U.S. at 241; *Friends*, 528 U.S. at 190.

This showing is no mere technicality. Courts have repeatedly found that the Government failed to meet its burden when its evidentiary submissions did not provide sufficient proof that the challenged conduct would not recur. *See Fikre*, 601 U.S. at 241 (government failed to meet burden, despite removing plaintiff from the federal No Fly List, because "the government's sparse declaration falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past"); *Al Jaber v. Sessions*, Civ. No. 17-

12520-IT, 2018 WL 11484075, at *1-*2 (D. Mass. Aug. 17, 2018) (government failed to meet burden, despite releasing habeas petitioner from custody, because the declaration submitted by ICE was "devoid of any information regarding the grounds on which Petitioner was released and fails to provide any basis for concluding that the conduct Petitioner challenges will not occur again in the future"). Here, the Government has not tried to do even that much. All the Government has had to say for itself is that it *can* re-detain Mr. Arias if it so chooses, for any reason at all, and that the detention would be permissible. Petitioner can envision little that runs more contrary to the Government's burden under this doctrine.

c. Mr. Arias has standing to request injunctive relief because the threat of re-detention is unabated.

The Government's final procedural volley is that Mr. Arias lacks sufficient standing to request injunctive relief. Respondents cite to *City of Los Angeles v. Lyons* and insist an injunction is "unavailable" to Mr. Arias because he has not shown a "likelihood of substantial and immediate irreparable injury." 461 U.S. 95, 111 (1983). *Lyons* concerned claims of an illegal chokehold during a police traffic stop. There, the Supreme Court held the plaintiff lacked standing for injunctive relief[5] because he needed to show not only (1) that he would have another encounter with police, but also (2) either that all police officers in L.A. implement these holds all the time, or that it was the City's policy for them to do so. *Id.* at 105-106. The Court indeed held that the risk of repeated injury was too speculative, but only because it found it "untenable to assert [ ] that strangleholds are applied by the Los Angeles police to every citizen who is stopped or arrested regardless of the conduct of the person stopped" and because nothing in the City's

[5] Notably, the Court did not hold that the plaintiff lacked standing to pursue his other claims or find that the case was moot. *Lyons*, 461 U.S. at 109.

policy "suggests that the chokeholds…are authorized absent some resistance or other provocation by the arrestee or other suspect." *Id.* at 108, 110.

Lyons does not prohibit injunctive relief in this case. Mr. Arias does not stand in the shoes of a citizen whose chances of re-encountering law enforcement are conjectural; he is a noncitizen in active removal proceedings. He has a duty to report any change in address and must appear in Immigration Court for all hearings related to his proceedings. Not only that, it is the Government's position that Mr. Arias's liberty during these proceedings depends wholly on the continuing exercise of its favorable discretion, that the Government may impose whatever conditions on his release it likes or revoke that release entirely at any time. This is not the alleged stance of a few rogue officers; it is the stated policy of the current administration. *Compare* ICE's "Interim Guidance Regarding Detention Authority for Applicants for Admission," Jul. 8, 2025 ("Effective immediately, it is the position of DHS that such aliens [who have not been admitted] are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole"),[6] *with Lyons*, 461 U.S. at 110 ("Nothing [in the City's policy] suggests that the chokeholds…are authorized" for any reason or no reason at all).[7] In

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[6] Available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission; *see also* U.S. Customs and Border Protection's Memorandum on "Detention of Applicants for Admission," Jul. 10, 2025, collectively attached as **Exhibit 1**.

[7] There is also ready evidence that this policy was already the rule of the day when Mr. Arias was arrested in March, prior to issuance of the July memorandum. *See Flores Salazar v. Moniz*, Civ. No. 25-11159-LTS, 2025 WL 1703516, at *2 (D. Mass. Jun. 11, 2025) (habeas granted for petitioner arrested in March 2025 while on active parole status). At a hearing on the petitioner's habeas petition, a witness from Customs and Border Protection (CBP), Patrol Agent in Charge James Trainor, testified that their operating guidance from Washington—communicated through meetings and teleconferences—was to reevaluate the parole of every person they encountered. *See* Tr. of hearing (June 9, 2025), Doc. 30, *Flores Salazar v. Moniz* (D. Mass.), at 54:24-25; 55:1-25; 56:1-25; 57:1-4, attached as **Exhibit 2**. The witness then admitted that no one from CBP actually conducted a substantive redetermination of the petitioner's parole status before arresting him and transferring him to ICE custody. *Id.* at 33:5-24; 37:5-15; 38:1-25; 39:1-2.

claiming that Mr. Arias's risk of re-injury is abstract at best, the Government offers *Lyons* with one hand and asks this Court to ignore what the other hand is doing.

Mr. Arias complied with every directive ICE gave him, routinely reporting his whereabouts, and he was nonetheless stopped by federal agents, pulled from his brother's car at gunpoint, thrown to the ground and handcuffed, and then detained for 88 days, and the only explanation he was given was that there were "new orders of the President" which somehow justified this conduct. *See* First Am. Pet., ECF 15, at ¶¶ 34-37, 40-43; Pet. Exh. 1, ECF 15-1, at ¶¶ 11-22. This is the injury the Government says Mr. Arias need not worry about anymore, that Mr. Arias has no reasonable basis to fear will be repeated, despite the Government's averments that this detention *was lawful.* Human beings are not goldfish, and the Government cannot pretend there is "no likelihood" of another substantial injury when it claims Mr. Arias's immigration status is the same as it ever was,[8] that the law gave them the authority to do this before, and that the same law would give them the authority to do it again.

As long as the Government maintains that Mr. Arias is subject to 1225(b) detention, and that it is accordingly authorized to re-detain Mr. Arias at will, Mr. Arias's habeas claim is cognizable and he is entitled to his requested relief.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that the Court grant Petitioner's First Amended Petition and order the following relief:

A. That the Court enter an order determining that Mr. Arias's custody is controlled by section 1226(a);

[8] If anything, Mr. Arias is even more vulnerable now than he was when he was arrested, because as far as the Government is concerned, his parole term has since expired. *See* Resp'ts' Obj, ECF 16, at p. 8.

B. That the Court enjoin Respondents from re-detaining Mr. Arias while his removal proceedings are pending in the absence of an individualized determination that his circumstances have materially changed such that he has become either a danger or a flight risk; and

C. That the Court award to Petitioner his reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act.

Respectfully submitted,

GENAURIS JOSE ARIAS LARA, Petitioner,

By his attorneys,

Dated: February 4, 2026

/s/ Lindsay Kramer Custer

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CERTIFICATE OF SERVICE

I, Lindsay Kramer Custer, hereby certify that on this date I served the foregoing Reply and all supporting exhibits by filing the same with the Court's ECF electronic filing system and by so doing served the Reply and exhibits on all registered participants to this action, including counsel for Respondents.

Dated: February 4, 2026 /s/ Lindsay Kramer Custer