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 SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Genauris Jose Arias Lara (Mr. Arias) hereby replies to the Respondents' Objection to his Second 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 that he had a credible fear of persecution in his home country. By allowing Mr. Arias to enter the U.S. under these circumstances, Respondents accomplished the following: (1) it removed Mr. Arias from the purview of section 235(b)'s mandatory detention scheme under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b), and placed him within the discretionary detention scheme of section 236(a), 8 U.S.C. § 1226(a); and (2) it permitted Mr. Arias to accrue due process liberty interests that protect him from arbitrary detention, interests which would apply regardless of which statutory detention scheme controls.

For seven months after his release, Mr. Arias lived with his family in Massachusetts while following all the rules Immigration and Customs Enforcement (ICE) expected him to. Yet that did not seem to matter to ICE when it decided to re-detain Mr. Arias last March for nearly three

months. Mr. Arias was not re-detained because he violated the conditions of his release or because of changes in his removal status; he was re-detained purely because, as the Government explained to him, there had been a policy change that required Mr. Arias' re-detention, without regard to his previous release. Mr. Arias filed a petition for *habeas corpus* following his re-detention, at which point Respondents willingly released him.

Since the Respondents' decision to voluntarily release Mr. Arias, Respondents have asked this Court to dismiss his petition as moot without an acknowledgement of the fact that Mr. Arias' rights were violated or a clear statement that it will not repeat its unlawful conduct. Indeed, Respondents want this Court to dismiss this petition while maintaining that it possesses the authority to re-detain Mr. Arias at any point and for any reason, based on their recent interpretation of a statutory scheme that numerous courts have rejected. Under these circumstances, Mr. Arias' release is illusory as his liberty is subject to the whims of Respondents that have shown a clear disregard for their previous procedures and regulations for the sake of accomplishing policy objectives. 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 with appropriate relief that will protect him against such a flagrant violation of the law.

ARGUMENT

Respondents argue 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 Second Am. Pet. ("Resp'ts' Obj."), ECF 21, at p. 10. Respondents then clearly state their position that Mr. Arias' parole has expired. *See id.* Accordingly, because Respondents believe that Mr. Arias' custody is controlled by section 1225(b)(1), which mandates his detention absent a parole grant, it follows that Respondents believe

that Mr. Arias should be in detention. Thus, unless Respondents are willing to make an exception for Mr. Arias, there is nothing preventing Respondents' officers from re-detaining him once this litigation is over. On the contrary, Respondents' interpretation of the statutory scheme applicable to Mr. Arias demands that their officers re-detain him upon encountering him. Yet, Respondents wish the Court to believe that Mr. Arias' risk of re-detention is nothing more than speculation because he has not provided specific facts that he will be detained again, while also knowing that the basis for Mr. Arias' earlier detention was not specific to him at all and that the policy which precipitated that detention has not changed.

The law does not require Mr. Arias's injury to be proof-certain before he can obtain relief. The Government maintains that, under its interpretation of the INA, it has the authority to re-detain Mr. Arias, and under this interpretation, Mr. Arias shall remain in custody until his asylum application is considered. Mr. Arias' Second Amended Petition seeks to stop the inevitable outcome Respondent's interpretation will lead to by asking this Court to: (1) enter an order which clearly states which statutory authority controls Mr. Arias' custody; and (2) grant an injunction preventing the Government from re-detaining Mr. Arias unless it makes an individualized determination that either changed circumstances now make him a danger or a flight risk, or he has become subject to final order of removal. 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' CUSTODY IS CONTROLLED BY 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 that the Government issued Mr. Arias in 2024 and 2025, and despite the warrant of arrest —all of which invoke the authority of section 1226— the 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). And tellingly, although Respondents are right that the statutory framework permitting Mr. Arias' custody could shift depending on the circumstances of a future arrest, the potential shifts in custodial authority proposed by the Respondents invoke section 1226 and its sub-sections, rather than section 1225. This conclusion, which the Respondents inadvertently reached, is obvious given that section 1226 applies to non-citizens who have entered the U.S., such as Mr. Arias. Accordingly, if those non-citizens face re-detention, the circumstances of their arrest could, as the Government contends, place them under different frameworks of section 1226, but would never place them under section 1225.

Additionally, several federal courts[1] interpreting the statutes before this Court have determined that section 1226(a) applies to noncitizens in removal proceedings who are detained in

[1] Petitioner acknowledges the current circuit split among the Courts of Appeals. *Compare Castanon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, 2026 WL 1223250, at *11 (7th Cir. May 5, 2026) ("Defendants' interpretation, however, not only fails to take full account of the statutory language but ignores the relevant statutory context and background as well as the government's own contemporaneous and decades-long understanding of the statute's meaning. By contrast, reading § 1225(b)(2)(A) to apply only to unadmitted noncitizens seeking lawful entry at our country's border and ports of entry faithfully adheres to each word in the statute, its grammatical structure, and statutory context, while accurately reflecting the statute's historical background, consistent with the government's long-standing understanding and application of it."); *Hernandez Alvarez v. Warden*, Fed. Det. Ctr. Miami, No. 25-14065, 2026 WL 1243395, at *21 (11th Cir. May 6, 2026) ("Simply put, the language that Congress has chosen to use does not grant to the Executive unfettered authority to detain, without the possibility of bond, every unadmitted alien present in the country. Nowhere in the text, structure, or history of the INA does that reading

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, e.g.,* Romero, Civ. No. 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Rodriguez*, 779 F. Supp. 3d at 1257; *Lopez Benitez*, 795 F. Supp. 3d at 487; *Martinez*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025).

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*

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find steady footing."); *Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026), *with Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. 2026) (stating that noncitizens present in the U.S. without admission are subject to mandatory detention under 8 U.S.C. § 1225); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3-4 (8th Cir. Mar. 25, 2026) (same). However, as the *Cunha* court explained, "the overwhelming majority of federal judges across the Nation to consider it and conclude that the government's novel interpretation of the immigration statutes defies their plain text. That text makes clear that Section 1226(a) governs detention of noncitizens like Petitioner. Section 1225(b)(2)(A) does not apply to such noncitizens, who are present in the United States after entering the country without inspection and admission, and who were not apprehended while entering the country or shortly thereafter." *Cunha*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026).

[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. 8, *infra*, many federal courts have now had occasion to reexamine the issue.

Castanon-Nava, No. 25-3050, 2026 WL 1223250, at *11 (7th Cir. May 5, 2026) ("Defendants' interpretation, however, not only fails to take full account of the statutory language but ignores the relevant statutory context and background as well as the government's own contemporaneous and decades-long understanding of the statute's meaning."); *Campbell v. Almodovar*, Civ. No. 25-09509-JLR, 2025 WL 3538351, at *7 (S.D.N.Y. Dec. 10, 2025).

Mr. Arias was neither arriving to the U.S. nor was he "seeking" admission when he was arrested by ICE agents last year, as such 1225(b) simply cannot apply to him. *See Jimenez*, 799 F. Supp. 3d at 68 (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, or he had become subject to a final order of removal.[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

[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* Second Am. Pet., ECF 19, at ¶¶ 31-34.

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; Second Am. Pet., ECF 19, at ¶ 28-29. 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 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.*; Second Am. Pet., ECF 19, at ¶ 28.[4] Contrary to the Government's claims, section 1225(b)(1) simply cannot govern Mr. Arias's custody status at this stage, given that he has been permitted to enter the U.S.

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 21, at n. 4.[5] 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,

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[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).

[5] Respondent's citation to 1225 further supports Mr. Arias' argument as the provision quoted clearly states that the non-citizen shall be detained until a final determination of his *credible fear*, not of his asylum claim, and only if they are found to not have credible fear is their detention authorized until they are removed. Therefore, as Mr. Arias was found to have a credible fear, he was released and permitted to enter the U.S. to pursue a determination concerning his claim for asylum.

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, and by the time Mr. Arias was issued this notice, he had already been allowed to enter the U.S., placing him within the purview of 1226(a). In other words, the issuance of the interim parole notice to Mr. Arias in 2024 cannot bootstrap the Government's detention authority where it is otherwise lacking. It is section 1226(a) that should be held as the authority that governs noncitizens' custody status once that individual has entered the U.S. and they are later detained within its borders. Therefore, the Court should grant Mr. Arias's Second 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.

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). At the same time, however, courts have held that a crucial distinction does exist between noncitizens arriving at the U.S. and those already present within its borders. *See Zadvydas*, 533 U.S. at 693. And this distinction matters 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).

Doubtlessly, the power to determine the process by which a non-citizen is allowed to enter the U.S. is a necessary function of the sovereign, and a certain level of deference must be afforded to it, yet our jurisprudence stops short of reading every provision of our immigration laws as necessarily implicating this "sovereign prerogative." *See id.* at *7. Moreover, outside of the

admission context, it is undisputed that due process liberty interests accrue regardless of any "statutory allowances," which necessarily includes the detention scheme of 1225(b). *See id.* These interests are present in full force in Mr. Arias' case. As a noncitizen who has been paroled into the U.S., even if 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*, Mr. Arias, having already been permitted to enter and live in the U.S. at liberty, in proximity to his family and friends, has accrued 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 the 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); *Clark v. Martinez*, 543 U.S. 371, 376, n.3 (2005) (internal citations omitted) ("Despite Benitez's release on a 1–year parole, this case continues to present a live case or controversy. If Benitez is correct, as his suit contends, that the Government lacks the authority to continue to detain him, he would have to be released, and could not be taken back into custody unless he violated the conditions of release . . ., or his detention became necessary to effectuate his removal . . . His current release, however, is not only limited to one year, but subject to the Secretary's discretionary authority to terminate . . . Thus, Benitez 'continue[s] to have a personal stake in the outcome . . .'").

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, and although it makes much of the fact that Mr. Arias was released last June "without any conditions," 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 21, at p. 2-4. The Respondents then minimize the conditions of Mr. Arias' original parole grant by framing it as the type of conditions a regular person would face in legal proceedings, such as keeping the court informed of his address, without acknowledging that under this parole grant Mr. Arias was also required to report this information to ICE and attend every appointment scheduled by ICE, conditions which were wholly separate from Mr. Arias' duties to the immigration court and his asylum claim.

The Government's assertion that Mr. Arias is not under custody because he is now free from detention under his expired grant of parole 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* Second Am. Pet., ECF 19, at ¶¶ 43-44; 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 21, at p. 9-10 ("The INA 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 doctrine of voluntary cessation as an exception to mootness 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 even attempted to meet its burden. All the Government has said for itself is that it has the authority to re-detain Mr. Arias if it so chooses, for any reason at all, and that his detention would be both permissible and mandated by their interpretation of the INA. Instead of meeting their burden, the Respondents have provided further information showing why Mr. Arias' injury is likely to happen again as under their interpretation of the INA, Mr. Arias should be detained until the completion of his removal proceedings.

c. Mr. Arias has standing to request injunctive relief because the threat of re-detention is unabated rendering his claim ripe for adjudication.

The Government's final procedural volley is that Mr. Arias lacks sufficient standing to request injunctive relief. Respondents cite *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[6] 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

[6] 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.

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 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 address change and must appear in Immigration Court for all hearings related to his proceedings. Court hearings where Respondents' agents have been present to arrest non-citizens following routine hearings in immigration court.[7] As such, it defies logic to suggest that Mr. Arias' chances of encountering ICE agents primed to re-arrest him are conjectural.

Not only that, it is the Government's position that Mr. Arias' liberty during these proceedings depends wholly on the continuing exercise of its favorable discretion, and that the Government may impose whatever conditions on his release it likes, or revoke that release entirely at any time and without Mr. Arias' knowledge that such a change has occurred. Indeed, that is exactly what happened last March: Respondents unilaterally decided to change their minds concerning Mr. Arias' release and rushed to arrest him. This was not the alleged stance of a few

[7] Although in recent weeks the Government has stated that its policy to arrest non-citizens following their hearings before the immigration court was the result of an error, there are recent reports of these arrests happening following routine hearings. *See* Gustavo Sagrero Alvarez, *Masked ICE agents arrest man with no deportation order in Seattle immigration court*, KUOW Puget Sound Public Radio, (April 9, 2026) available at: https://www.kuow.org/stories/masked-ice-agents-arrest-man-with-no-deportation-order-in-seattle-immigration-courthouse, attached as **Exhibit 3** ("'We will continue to arrest illegal aliens at immigration courts following their proceedings,' the DHS spokesperson said. 'It is commonsense to take them into custody following the completion of their removal proceedings. Nothing prohibits arresting a lawbreaker where you find them.'").

rogue officers; it was and continues to be 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"),[8] *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).[9] In 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.

In a similar vein, Respondents' argument that Mr. Arias' claim is not ripe because his injuries are too speculative fails for the same reasons. *See*, Section III.c., *supra*. In the First Circuit, ripeness depends on: "'(1) the fitness of the issues for judicial decision,' and (2) 'the hardship to the parties of withholding court consideration.'" *Mboko v. Joyce*, No. 2:25-CV-00240-NT, 2025 WL 1697012, at *4 (D. Me. June 17, 2025). The fitness prong asks "whether allowing more time for development of events would 'significantly advance [the court's] ability to deal with the legal issues presented or aid' the court's resolution" and turns on "'finality, definiteness, and the extent

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[8] 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**.

[9] 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.

to which resolution of the challenge depends upon facts that may not yet be sufficiently developed.'". *Id.* The Hardship prong asks, "whether the challenged action creates a direct and immediate dilemma for the parties", "the judgment's usefulness" and whether the requested relief "would be of practical assistance" in resolving the underlying matter. *Id.*

Mr. Arias' claim is ripe for adjudication. The potential hardships Mr. Arias would experience in the event of his re-detention are numerous as he would be deprived of his liberty, be re-moved from friends and family, and then be forced to undergo removal proceeding while in detention, which, as his history shows, is not guaranteed to take place in the same state he is arrested. *See also id.* at *4, n.7 (noting petitioner's persuasive case for hardships solely based on the difficulties he would suffer accessing counsel while detained).

Thus, the unresolved question is whether Mr. Arias' claim is fit for judicial decision. It is. Mr. Arias' claim does not require additional events to unfold before this Court can render a decision. Mr. Arias has submitted evidence showing Respondent's policy to mandatorily detain individuals like him. Likewise, Respondents have replied to this petition by reasserting their position that Mr. Arias is amenable to mandatory detention, and that the only reason he is out of this detention is because, following the filing of Mr. Arias' habeas petition, Respondents decided to release him. Under these circumstances, Mr. Arias' situation is dire and in need of a proclamation by this Court explaining the statutory framework applicable to him and the circumstances under which he could be arrested, and this would still be the case even if Mr. Arias had been ordered released following his initial filing. *See Hensley*, 411 U.S. at 352-53 ("Even if petitioner remained in jail only long enough to have his petition filed in the District Court, his release by order of the District Court would not jeopardize his 'custody' for purposes of a habeas corpus action.").

CONCLUSION

Mr. Arias complied with every directive ICE gave him and routinely reported his whereabouts, just for him to be stopped by federal agents, pulled from his brother's car at gunpoint, thrown to the ground and handcuffed, and then detained for 88 days. The only explanation Mr. Arias ever received was that there were "new orders of the President" which somehow justified this conduct. *See* Second Am. Pet., ECF 19, at ¶¶ 35-38, 41-44; Pet. Exh. 1, ECF 19-1, at ¶¶ 11-22. This is the injury the Government says Mr. Arias needs 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,[10] 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.

WHEREFORE, the Petitioner respectfully requests that the Court grant Petitioner's Second 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);

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

[10] 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 21, at p. 9-10.

circumstances have materially changed such that he has become either a danger or a flight risk, or that he has become subject to a final order of removal; 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: May 8, 2026

/s/ Ricardo Jimenez Solis

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CERTIFICATE OF SERVICE

I, Ricardo Jimenez Solis, 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: May 8, 2026 */s/ Ricardo Jimenez Solis*