UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.U., *Petitioner-Plaintiff*, v. RAUL MALDONADO, Jr., in his official capacity as Warden of the Metropolitan Detention Center, *Respondent-Defendant*.	Case No. 1:25-cv-04836 (OEM) ORAL ARGUMENT REQUESTED Expedited Hearing Scheduled Pursuant to Habeas Statute

PETITIONER-PLAINTIFF J.U.'S REPLY IN FURTHER SUPPORT OF HIS EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner J.U. respectfully submits this reply in further support of his Petition.

INTRODUCTION

The Government tacitly admits they cannot hold J.U. in compliance with Section 236 of the INA[1] and the Due Process Clause. ***They do not even argue this point.*** Instead, the Government argues J.U. has no Due Process rights because, in the Government's admitted "fiction," J.U. has been detained at the border of the United States since March 2024.

But J.U. was not detained at the border in March 2024: he was released on his own recognizance, and the Government cannot contest this. The Government argues that in July 2025 they were ***obliged*** to detain J.U. under Section 235 of the INA but Section 235 cannot apply because Section 235 would be incompatible with the Due Process Clause if it applied within the borders of United States. It does not. It applies *at* the border, to persons who stand on the threshold of this country, not to individuals like J.U. who have been in this country for over a year. The Supreme Court has already held so, as have ***dozens*** of District Courts from a majority of the geographic Circuits, all of which have confronted this question and rejected the Government's position. In short, Section 235 does not apply.

The Government's other arguments fail too. The Government cannot—and has not tried to—justify J.U.'s detention under Section 236 or any other provision of law; administrative remedies are exhausted; irreparable injury is ongoing and increasing; and the Petition should be granted.

[1] Petitioner respectfully carries over abbreviations and terms defined in his Petition, Dkt. 1.

ARGUMENT

I. SECTION 235 DOES NOT JUSTIFY J.U.'S DETENTION

Section 235 cannot justify J.U.'s detention because it does not apply to J.U., who was detained in July **2025** within the United States, after he had been here for over a year and after the Government earlier released him on his own recognizance. Federal courts—including the Supreme Court—have harmonized Sections 235 and 236 of the INA for decades by reading Section 235 as applying at the border and Section 236 as applying within the United States. In *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018), the Supreme Court held that Section 235 governs "whether an alien *seeking to enter the country* is admissible" but Section 236 applies to aliens "once *inside* the United States[.]" *Jennings*, 583 U.S. at 288-89 (emphases added); *see also id.* at 289 (Section 235 authorizes the Government "to detain certain aliens seeking admission into the country" but Section 236 "authorizes the Government to detain certain aliens already in the country"). *Jennings* controls here and forecloses the Government's position. *See also Lopez Benitez*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) at *8 ("the line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings v. Rodriguez*, 583 U.S. at 288-89 (2018)).

In the face of this settled law, the Government proffers a novel interpretation of Section 235 as applying *within* the United States, which it has used in recent months notwithstanding precedent like *Jennings*. *See, e.g.*, Opp'n at 4. That reading violates the law as well as the canon of constitutional avoidance. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) ("It is a cardinal principle of statutory interpretation" that a federal court should favor an interpretation that is consistent with the Constitution). The Supreme Court has held that "certain constitutional

protections available to persons inside the United States are unavailable to aliens outside of our geographic borders . . . But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to ***all 'persons' within*** the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693 (emphasis added). The problem with the Government's interpretation of Section 235 as applying within "our geographic borders," *id.*, is that Section 235 purports to mandate detention without regard for Due Process rights. The Opposition admits this: "Petitioner's statutorily-mandated detention does not run afoul of the Fifth Amendment's Due Process Clause because, as an 'applicant for admission,' Petitioner's only rights regarding admission are those that Congress has provided by statute." Opp'n at 2–3. But the Government's interpretation conflicts with more than a century of controlling precedent. *See Zadvydas*, 533 U.S. at 693 (gathering cases holding that the Due Process Clause applies to "all persons" within America). The Government's novel interpretation should therefore be rejected. *Id.*, at 689.

Dozens of District Courts from across America, and from a majority of the geographic Circuits, have swiftly and overwhelming rejected the Government's novel interpretation of Section 235 as incompatible with the statutory text, the Constitution, and controlling precedent. *See, e.g., Lopez Benitez*, at *5–8 (analyzing "the plain text of the statute" and holding that it applied at the borders of America, not within); *Samb v. Joyce*, 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (following *Lopez*); *Doe v. Moniz*, 2025 WL 2576819 at *4-5 (D. Mass. Sept. 5, 2025) ("Respondents' argument that Section 1225's detention provisions apply is a nonstarter[.]"); *Romero v. Hyde*, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) ("the interpretation [of Section 235] being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing

within the United States, is contrary to the plain text of the statute") (gathering 13 cases from District Courts in Washington, Massachusetts, Arizona, New York, Minnesota, California, Nebraska, and Maine); *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *2 (D. Md. Aug. 24, 2025) ("The Government appears willfully blind to the operation of 8 U.S.C. § 1226(a)"); *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) ("Respondents' interpretation of Section 1225 would render Section 1226 unnecessary"); *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) ("The plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country[.]"); *Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) ("Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of 'aliens already in the country.'"); *Mosqueda v. Noem*, 2025 WL 2591530, at *4-5 (C.D. Cal. Sept. 8, 2025) ("The Court agrees with petitioners that the plain text of section 1226(a) applies to them . . . The Court disagrees with respondents' contention that Congress intended to create a conflict between juxtaposing sections of the same statute.").

The Government's only attempt to distinguish these precedents is the so-called "entry fiction," by which "aliens seeking admission into the United States may physically be allowed within its orders [but] are legally considered to be detained at the border[.]" Opp'n at 4. But this is, as the Government acknowledges, a "fiction": J.U. was not "at the border" when he was detained, he was in the United States. He had been residing in the Bronx for more than a year.

The Government's citation to *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) does not make this fiction any more defensible, and instead confirms it makes no sense here. In *Poonjani*, the applicant ***was*** detained at the border (at O'Hare International Airport) and

paroled. Petitioner later failed to appear at his immigration proceedings and was ordered removed *in absentia*. *Poonjani*, 319 F. Supp. 3d at 648. *Poonjani* explained that "[t]he entry fiction applies to aliens – like Petitioner – who are stopped at the border ***and*** subsequently paroled into the United States." *Id.* (emphasis added); *see also Leng May Ma v. Barber*, 357 U.S. 185, 189 (1958) (equating parole with ongoing detention). Here, however, it is undisputed that J.U. was ***not*** "paroled into the United States." Ex. 1 at 2 ("You are an alien ***present in*** the United States who has ***not*** been admitted or paroled.") (emphases added). J.U. was released on his own recognizance, Ex. 15 at 2. The entry fiction thus does not apply.

The Government's contention that J.U. was released in 2024 "due to lack of bedspace" (Opp'n at 1) is unsupported, contradicted by the record, and legally irrelevant. When J.U. was arrested in July 2025, he was undoubtedly within "our geographic borders" and therefore under the protection of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. at 693.

This Court should reject the Government's position that J.U. is subject to detention under Section 235. Because the Government has ***not tried*** to argue that J.U. could be properly detained under any other provision of law, the Court should order J.U.'s immediate release.

II. THE GOVERNMENT IS ESTOPPED FROM DETAINING J.U. UNDER SECTION 1225

Independently, J.U. should be released because the Government is estopped from contradicting itself. The Government does not contest that DHS released J.U. on his "own recognizance," (Ex. 15 at 2), pursuant to "section 236" of the INA (Ex. 15 at 1), and admitted he was "an alien present in the United States" as opposed to "an arriving alien" (Ex. 1 at 2). This is all incompatible with detention under Section 235. *See* Petition, ¶¶ 70-75.

The Government argues that it is not "prevented from clarifying the detention authority . . . as DHS now interprets it" (Opp'n at 16) but this is a contradiction, not a "clarification." It is

more than mere "negligence" for the Government to release J.U. under Section 236, direct him to proceed to New York, and authorize him to find employment (Ex. 17), only to then arrest him at an immigration hearing he was required to attend. Even at that July 1, 2025 hearing, the immigration judge—an Article I official—scheduled the next hearing in J.U.'s immigration case for March 10, 2026, effectively inviting him to rely on at least nine months to prepare for trial on his asylum claim. Ex. 24. But at that July 1 hearing, the Government arrested J.U., purportedly under Section 235; and, on September 3, 2025, the immigration court abruptly accelerated J.U.'s hearing to September 30, 2025 ***because*** he is on the "detained docket." Dkt. 8, ¶ 4; *see also* Ex. 25 (scheduling trial for September 30, 2025), Ex. 26 (continuing trial to October 9, 2025).

The Government cites *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549 (W.D.N.Y. 2020) as "essentially identical to the facts of this case" but there is an enormous difference: the petitioner in *Rodriguez-Figueroa* was detained under § 1225(b), *id.* at 558, and never released, *id.* at 554-55. Here, by comparison, the Government not only told J.U. he was being released under Section 1226 but ***did*** release J.U. and directed him to proceed to New York, where he established a life for himself. With the Government's permission, he found lawful employment. Ex. 17. J.U. relied on the Government's release order to find a job, a romantic partner, and a home. Petition, ¶¶ 3, 40–41. Perhaps most relevant now, J.U. relied on the Government's representation that no trial on his asylum claim would occur until March 2026 at earliest. Ex. 24. Nonetheless, after and because J.U. was detained, on September 3, 2025 the immigration court ***rapidly*** accelerated trial to September 30, working a new injury against J.U.'s Due Process rights. J.U. relied to his detriment on having at least until March 2026 to prepare for trial on his immigration claim. It was grossly unfair for the Government to then pull the rug out from under him by first violating his Constitutional rights and then pointing ***to its own misconduct*** to justify

a new and more permanent kind of harm. *See Schwebel v. Crandall*, 967 F. 3d 96, 99 (2d Cir. 2020) (the Government was equitably estopped by its misconduct from removing an immigrant). Even *if* the Government's interpretation of Section 235 *were* correct—which it is not—releasing J.U. on his own recognizance in March 2024 *would have been* "noncompliance with an affirmatively required procedure," which would have sufficed to estop the Government from detaining him under Section 235 in July 2025. *Schwebel*, 967 F.3d at 103-04.

The Government should be held to its words and its deeds. Even under *Rodriguez-Figueroa*, the Government should be estopped from contradicting itself on these facts.

III. ADMINISTRATIVE EXHAUSTION HAS BEEN SATISFIED

Since J.U. filed his Petition on August 29, 2025, the BIA—an Article I court whose judges are hired and fired by the Attorney General and whose rulings are binding on all immigration courts[2]—has adopted the Government's novel interpretation of Section 235. On September 5, 2025, the BIA decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (supplied herewith as Ex. 27). In *Hurtado*, the BIA held that immigration judges had no jurisdiction to hear bond requests from any noncitizen present within America who was not lawfully admitted "because the respondent was subject to mandatory detention under section 235(b)(2)" of the INA. *Id.*

Hurtado forecloses administrative remedies. J.U.'s first motion for bond was already denied on these grounds. Ex. 23 ("Denied, because Mandatory detention[.]"). On September 8,

[2] The Attorney General appoints and supervises immigration judges, who are administrative judges within the Executive Office for Immigration Review. 8 U.S.C. § 1101(b)(4). The incumbent Attorney General has exercised her authority to fire nine BIA members. *See also* Britain Eakin, *"Trump Admin To Nearly Halve Immigration Appeals Board,"* LAW360 (February 20, 2025), https://www.law360.com/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board (soon after taking office, Attorney General Bondi fired nine BIA members).

2025, Immigration Judge Francisco Prieto followed up that terse ruling with a lengthier order, Ex. 28, adopting the Government's novel interpretation of Section 235. The September 8, 2025 opinion, justifying the July 31, 2025 ruling, specifically cites to *Hurtado* as applicable to J.U.'s case. Ex. 28 at 3, n.3. The BIA has, therefore, foreclosed J.U.'s administrative remedies since J.U. filed this Petition and this Court should therefore excuse or find administrative exhaustion. *See Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (administrative exhaustion is satisfied for habeas petitioners challenging the Government's novel interpretation of Section 235 because *Hurtado* makes any appeal to immigration courts "futile").

The Government also argues that J.U. should have requested discretionary parole under Section 235 (codified at 8 U.S.C. § 1182(d)(5)(A)) but such parole is inapplicable because J.U. is not properly detained under Section 235, *supra*. And the Government has already adopted the position that "there are no extraordinary circumstances present" justifying release, making any such request futile. Opp'n at 20.

Moreover, such parole would not come in time to avoid the fresh injury the Government is working to compound its initial violation. Although on July 1, 2025, the immigration court scheduled a hearing in J.U.'s asylum case for March 10, 2026 (Ex. 24), on September 3, 2025—after J.U. filed his Petition—that court ***rapidly*** accelerated trial on J.U.'s asylum claim to September 30, 2025. Ex. 25 (scheduling order). The Government and Petitioner agreed to joint motions for continuance in this habeas matter and the immigration case but trial on J.U.'s asylum claim is still set for October 9, 2025. Ex. 26.

J.U. cannot adequately prepare his case for asylum in three weeks, nor should he have to. The Government is working irreparable harm against J.U. by detaining him and has now expedited the merits hearing on his asylum case because they have detained him. The

Government cannot justify its own wrongful conduct (detaining J.U.) by pointing to more wrongful conduct (rushing J.U. through a trial scheduled on four weeks' notice). *Corniel-Rodriguez v. Immigr. & Naturalization Serv.*, 532 F.2d 301, 302 (2d Cir. 1976) ("It is, as Justice Cardozo stated long ago, a 'fundamental and unquestioned' principle of our jurisprudence that 'no one shall be permitted to take advantage of his own wrong.'"). By the Government's logic, the Government could wrongfully detain hundreds of thousands or millions of persons and force them to justify their asylum claims on a few weeks' notice, all the while arguing that habeas corpus should not issue because it will all be over soon. *See* Opp'n at 19 ("the government has taken several steps to ensure the detention has a discernable end"); *cf.* Const. Art. I, Section 9 ("the Writ of Habeas Corpus ***shall not*** be suspended") (emphasis added).

Finally, even where bond has been granted by an immigration judge who rejected the Government's novel interpretation of Section 235, the Government has refused to accept payment. *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *2 (D. Md. Aug. 24, 2025) ("Petitioner's family attempted to pay the bond, which the Government refused to accept."). This further shows the futility of administrative remedies. Therefore, the Court should order that J.U. shall be released immediately from detention rather than ordering any new bond proceeding under Section 236 (which would, in any event, be conducted by an immigration judge who serves at the pleasure of the Attorney General).

J.U. is wrongfully detained at the MDC and the Government is now using one wrong to justify another. Expedited relief is needed both because J.U.'s detention is wrongful and also to take J.U.'s case off the "detained docket" and thereby to allow him and his counsel time to adequately prepare for trial on the merits of his asylum claim.

Respectfully submitted,

Dated: September 16, 2025

By: */s/ Marc L. Greenwald*

Marc L. Greenwald
Brendan Carroll*
Adam Burstain**
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 Fifth Avenue
New York, New York 10016
(212) 849-7000
marcgreenwald@quinnemanuel.com
brendancarroll@quinnemanuel.com
adamburstain@quinnemanuel.com

William R. Sears**
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
(213) 443-3000
willsears@quinnemanuel.com

* admitted pro hac
** pro hac vice forthcoming

Pro bono counsel for
Petitioner-Plaintiff J.U.