UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Barrington Clive CAMPBELL,

Petitioner,

-v-

Judith ALMODOVAR, New York Field Office Director, U.S. Immigration and Customs Enforcement; Todd LYONS, Acting Director U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary of Homeland Security,

Respondents.

No. 25 cv 9509 (JLR)

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION

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I. PRELIMINARY STATEMENT

Petitioner respectfully submits this reply in further support of his petition for a writ of habeas corpus. The government's opposition rests on a categorical proposition—the "entry fiction"—that has been repeatedly rejected by federal courts addressing the precise situation presented here. The government argues that because petitioner is classified as an "arriving alien" under 8 U.S.C. § 1225(b), the Constitution entitles him only to whatever procedures Congress chose to provide for initial applicants for admission. According to the government, Supreme Court decisions such as *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 516 (2020), foreclose judicial review of the procedures used to detain individuals in Petitioner's position. The government further relies on several inapposite district court decisions, to argue that arriving aliens have no constitutional right to a bond hearing or individualized custody assessment.

Petitioner does not challenge the expiration of his parole, which expired by its terms. Rather, he challenges the government's decision to re-detain him after more than four years of lawful presence in New York, during which he, worked, attended immigration court, pursued his asylum claim, and built substantial ties to the United States. That re-detention occurred without notice, justification, or any individualized determination. The government's categorical position cannot be reconciled with the right to due process in these circumstances.

II. ARGUMENT

a. Petitioner is Entitled to Due Process Protections Beyond the Detention Statute as He Is Not At The Threshold of Entry

The Due Process clause of the Fifth Amendment "covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez v. Decker*, 978 F.3d

842, 850 (2d Cir. 2020) (citing *Zadvydas, v. Davis*, 533 U.S. 678, 693 (2001)); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").

As an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The question at issue here is whether the government can, after paroling an arriving alien into the country, subject that individual to mandatory detention years later. The government contends it can and that Petitioner has no due process right to challenge his detention because a line of cases, led by the Supreme Court's decisions in *Thuraissigiam* and *Mezei*. The government would read these decisions to treat Petitioner as being on the threshold of entry and forever an applicant for admission, and, thus, not subject the Fifth Amendment protections per *Zadvydas. See Mezei*, 345 U.S. at 212 ("[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."). But these cases are inapposite to Petitioner here, who has not been denied entry and has established significant connections to the United States during his more than four years of presence within the country. Numerous courts have noted this distinction and attached due process rights beyond the statutory text.

In *Tenemasa-Lema*, the U.S. District Court for the District of Massachusetts confronted an argument materially identical to the government's position here—that an arriving alien whose parole expired could be treated as though he were physically at the border for due-process purposes and subjected to mandatory detention under § 1225(b) without any procedural protections. *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025). The court rejected this argument, explaining that while the entry fiction

may govern the statutory framework for admission, it does not control the constitutional analysis for physical detention imposed inside the United States. *Id.* The court found, noting the entry fiction doctrine and the limits in *Thuraissigiam*, "that constitutional due-process protections regarding detention flow simply as a matter of 'geographic' presence within the United States" *Id.* (citing *Velasquez Rincon*, No. CV 25-12633-BEM, 2025 WL 3122784, at *5–7, quoting *Zadvydas*, 533 U.S. at 693.. That court emphasized that in *Thuraissigiam*, the Supreme Court affirmed the long-held principle that "aliens who have established connections in this country have due process rights." *Id.* In holding that the arriving alien petitioner was entitled to more due process than the statute afforded, the court cited his family and community ties. *Id.* ("even without disturbing the metaphysical "entry fiction" that may obstruct, in some senses, our ability to admit that a non-citizen is really "here," one can still constitutionally recognize Petitioner's actual life in this country—his years as part of our community—not so easily set aside."). The court found that years of government-authorized presence and ties to the United States gave rise to a constitutionally protected liberty interest and applied *Mathews v. Eldridge*, 424 U.S. 319 (1976) and granted the petition.

The court in *Velasquez Rincon* reached the same conclusion. *Velasquez Rincon*, 2025 WL 3122784, at *1. The petitioner had lived in the United States for nearly four years, and was pursuing his asylum claim, when ICE re-detained him mandatorily under § 1225. *Id.* at *3. The court held that due process applied because of his years of presence and that this created a liberty interest that could not be extinguished through mandatory detention in contrast to the mere 25 yards of entry accomplished by the petitioner in *Thuraissigiam*. *Id.* at *6. This conclusion was despite the entry fiction doctrine. *Id.* The court noted that "the Supreme Court has never applied the entry fiction doctrine to a case like this—to constitutionally justify the detention of a person

living freely, for years, within the United States—and its expansion here cannot be justified." *Id.* at *2. The court confronted the notion in *Thuraissigiam* that the entry fiction preserves "the 'sovereign prerogative' of governing admission to this country," *id.* at *7 (quoting *Thuraissigiam*, 591 U.S. at 140), by contrasting with the petitioner who has been living in the United States for nearly four years and "who merely seeks to continue engaging in the same removal proceedings as before, only not from a jail cell." *Id.*

Courts in this district, too, have distinguished the entry fiction doctrine to hold that additional due process must attach for noncitizens who have lived in and established ties to this country. In *Munoz Materano v. Arteta,* Judge Ramos held that the petitioner who "who had already been living and working in the U.S. on parole for nearly two years at the time ICE arrested him, is clearly distinguishable from the petitioner in *Thuraissigiam* who had just barely crossed the border when he was arrested." *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *12 n. 20 (S.D.N.Y. Sept. 12, 2025). In *Al-Thuraya v. Warden, Orange Cnty. Corr. Facility,* the petitioner was subject to expedited removal under 8 U.S.C. § 1225(b)(1), provided a credible fear interview, and then paroled from detention, living freely in the community. *Al-Thuraya v. Warden, Orange Cnty. Corr. Facility*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025). In holding that the entry fiction did not apply to the petitioner, Judge Subramanian contrasted *Mezei* and *Thuraissigiam* with the petitioner in that case by noting that Mezei and Thuraissigiam were "conclusively denied entry" in contract to the petitioner who has "pending claims to stay here, and [is] not seeking review—directly or indirectly—of any decision to exclude them. *Id.* at *5. In that case, like here, the government pointed to *Poonjani v. Shanahan*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018), and *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020) for the proposition that Petitioner is at "threshold

of initial entry." *Mendez Ramirez,* 612 F. Supp. 3d at 219. Addressing those cases, Judge Subramanian's conclusion is applicable here to:

> Under the constitutional interpretation adopted by *Poonjani and Mendez Ramirez,* "the Government could permanently detain arriving aliens at detention facilities on the mainland under the fiction that such persons were not 'in' the United States, no matter how long, arbitrary, or capricious such detention. What's more, that wide-sweeping authority would not be grounded in the Constitution itself (which broadly provides that 'no person shall ... be deprived of life, liberty, or property, without due process of law'), but rather the INA's administrative definition of 'admission.'" Neither the Supreme Court, the Second Circuit, nor as far as the Court can tell, any circuit court, has endorsed this outcome based on *Mezei.*

Al-Thuraya, 2025 WL 2858422, at *6 (citations removed).

The cases cited by the government to show that the entry fiction should apply to Petitioner are not on point. In, *Kordic*, the petitioners, who entered on conditional crewman landing permits, were detained seven days after absconding, and then returned to their vessel. *U. S. ex rel. Kordic v. Esperdy*, 386 F.2d 232, 233 (1967). In *D.A.V.V. v. Warden, Irwin County Detention Center*, the petitioner was detained immediately at entry, charged and convicted of drug trafficking conspiracy, and was never at liberty in the United States. *D.A.V.V. v. Warden, Irwin County Detention Center* No. 20 Civ. 159, 2020 WL 13240240, at *1 (M.D. Ga. Dec. 7, 2020). In *Salim v. Tryon*, Petitioner was a lawful permanent resident who attempted reentry after being convicted of possession of a controlled substance. *Salim v. Tryon*, No. 13 Civ. 6659 (JTC), 2014 WL 1664413, at *1 (W.D.N.Y. Apr. 25, 2014). After this entry he was mandatorily detained as an arriving alien, and he never was at liberty subsequent to his designation as an arriving alien. *Id.* In *Gonzales Garcia v. Rosen*, the petitioner was detained approximately one mile from the United States border, "on the threshold of initial entry." *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021). *Poonjani*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018), is also not applicable to Petitioner. Poonjani was charged as an arriving alien after attempting to

enter the country with a fake passport. *Id.* at 645. He remained in the United States for nearly fifteen years, did not appear for his asylum hearing, and was ordered removed. *Id.* He was later arrested and convicted of tax fraud and was subsequently detained by immigration authorities. *Id.* Poonjani was detained subsequent to a criminal arrest and, at the time, to a final order of removal, which was later reopened. *Id. Guzman v. Tippy*, 130 F.3d 64 (2d Cir. 1997), likewise does not apply. The petitioner in *Guzman* had arrived in the United States from Cuba in 1980, whereupon he was "paroled to a sponsor." *Id.* at 65. In 1987, he was convicted of second degree murder, resulting in the revocation of his immigration parole. *Id.* After completion of his prison sentence in 1992, the petitioner was taken into immigration custody, where he remained for several years, subject only to annual evaluation of his eligibility for parole by the then-Immigration and Naturalization Service ("INS"). *Id.* Similar to Poonjani, Guzman was detained subject to a criminal arrest.

None of cases cited by the government are on applicable here and none address Petitioner's constitutional question here: what process is due before the government may re-detain a person who lived for years and established significant connections to the United States? Petitioner's case is analogous to the cases cited above finding attaching due process rights beyond the detention statute to noncitizens who have built substantial, years-long ties within the United States. In each of these case, courts have departed from the fiction that a noncitizen who has established such ties are at the threshold of entry and without the due process right to challenge their mandatory detention. *Mezei* and *Thuraissigiam*, which describe an individual who remained detained on Ellis Island and another who had not travelled more than 25 yards past the United States border, respectively, are wholly dissimilar to Petitioner, who lived at liberty for more than four years in Bronx, New York, over 2,000 miles from the port of entry at

San Ysidro, California. *See* Pet. ¶ 5 & Ex. E. Accordingly, Petitioner is entitled to the due process guarantee for noncitizens present in the United States. *See Velasco Lopez*, 978 F.3d at 850 (attaching Fifth Amendment protections to "noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent.").

b. *Mathews v. Eldridge* Requires Release From Detention

The Second Circuit applies the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test "when determining the adequacy of process in the context of civil immigration confinement." *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *12 (S.D.N.Y. Sept. 12, 2025). Courts addressing redetention after years of supervised liberty apply *Mathews v. Eldridge* to determine the constitutionally required procedures. Each factor weighs decisively in petitioner's favor. "The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Id.*

The first *Mathews* factor—the private interest affected—is substantial. "The most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851, *see Zadvydas*, 533 U.S. at 690. Petitioner has lived in the United States at liberty in Bronx, New York for more than four years. Pet. ¶ 5. He has established a life with this romantic partner who has severe mental disabilities, and for whom he is the primary breadwinner. *Id. See Make the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908, at *10 (D.D.C. Aug. 29, 2025) ("once they are present in the United States, noncitizens

have a "weighty" liberty interest in remaining, as they "stand[ ] to lose the right to stay and live and work in this land of freedom," and "may lose the right to rejoin [their] immediate family, a right that ranks high among the interests of the individual."), citing *Landon v. Plasencia*, 459 U.S. 21, 34, (1982)).

The second *Mathews* factor—the risk of erroneous deprivation under the procedures used—also strongly favors petitioner. ICE provided no notice that it intended to take petitioner back into custody, no individualized explanation of any change in circumstances, and no opportunity to contest his redetention before it occurred. When ICE seized him, it provided no rationale whatsoever. The absence of even minimal procedural safeguards creates a substantial risk of arbitrary or erroneous deprivation of liberty. *See Munoz Materano*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *13 (S.D.N.Y. Sept. 12, 2025) ("Even if, arguendo, ICE had the statutory, discretionary authority to detain Munoz Materano pursuant to § 1225, the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is.") (citations and quotations removed).

The third *Mathews* factor—the government's interest and the burdens of additional procedures—cannot overcome the weight of the first two factors. The government undeniably has an interest in ensuring attendance at immigration proceedings and protecting the community. but petitioner lived at liberty for over four years with no incident, attended immigration court hearings, has a pending application for asylum, and substantial community ties.

The balancing of the *Mathews* factors therefore overwhelmingly supports petitioner. He has a substantial liberty interest arising from more than four years of government-authorized presence; the absence of notice or individualized assessment creates a substantial risk of error;

and the government's interests can be fully protected through a minimal administrative process that it already employs in other statutory detention categories. Every court confronted with these circumstances has reached the same conclusion: due process requires notice and an individualized custody determination before re-detention occurs. Petitioner is entitled to those constitutional protections and should be released.

III. CONCLUSION

For these reasons, and those set forth in the Petition, petitioner respectfully requests that the Court grant the writ and order his release or hold an individualized custody hearing.

Dated: New York, New York
November 28, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 2,644 words.