

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ROLAND IVONIN,
Petitioner,
v.

PHILIP L. RHONEY, in his official
capacity as Deputy Field
Office Director, Buffalo Field Office,
U.S. Immigration &
Customs Enforcement, et al.,

Respondents.

Civil Action No. 25-CV-06673-EAW

PETITIONER'S REPLY WITH ADDITIONAL BRIEFING

Comes now, Petitioner, through counsel and wishes to bring to the Court's attention a recent decision by the Hon. Lewis J. Liman in the Southern District of New York in *Qasemi v. Francis, et. al.*, 25-cv-10029 (S.D. New York, December 17, 2025) involving substantially similar facts to the instant case. In *Qasemi*, a non-citizen who entered the country with an appointment from the "CBP One" application was detained by ICE and put through the credible fear process, and thereafter, during the pendency of removal proceedings against him, was granted humanitarian parole and released from detention. Thus, the only difference between *Qasemi* and Petitioner here was that *Qasemi* entered through a CBP One appointment and was granted humanitarian parole, whereas Petitioner Ivonin was already living in the United States, departed after being granted "advance parole" and returned to the country on that grant of

“advance parole”. Like Qasemi, Petitioner was granted parole and released from custody. Like Qasemi, Petitioner was then, years later, re-detained by ICE and taken back into custody. The Qasemi court held that a person in this posture can only be detained under 1226(a), and not under 1225(b)(1), so as to “avoid potentially absurd outcomes.” Qasemi, at 25. The Qasemi court ordered Petitioner’s immediate release from custody.

The *Qasemi* court’s analysis of the effect of the end of Petitioner’s parole begins on Page 10. Essentially, “[t]he Government argues that because of the termination of Petitioner’s parole he is subject to mandatory detention and can be arrested at any time without notice... It relies on the language of the statute that, ‘when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.’” *Qasemi* at 10. “In the Government’s view, Petitioner must now be treated as he was treated in May 2024 when he first arrived in this country because his parole ended and the Petitioner must be returned ‘to the custody from which he was paroled.’ In other words, the Government argues that Petitioner must be treated as if he was never paroled, and that Petitioner’s detention is now mandatory.” *Id.*

The *Qasemi* court summarized the Petitioner’s argument as being that, because he “is not an arriving alien and because he was previously paroled into the United States, by the terms of the statute itself he does not fall within the mandatory detention provision of Section 1225(b)(1).” *Id.* at 11. “Instead, he argues that, as a result of the termination of his parole, he may be detained only pursuant to the terms of Section 1226(a), the catchall provision for the ‘apprehension and detention of aliens’ under which detention is at the discretion of DHS. Section

1226 is the ‘default rule that authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.’” *Id.* citing *O.F.B. v. Maldonado*, 2025 WL 3277677, at *4 (E.D.N.Y. Nov. 25, 2025) (quoting *Jennings*, 583 U.S. at 289).

The *Qasemi* court “[looked] to both the plain meaning of the relevant terms, and the ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“A court must interpret the statute as a symmetrical and coherent regulatory scheme and fit, if possible, all parts into an harmonious whole.”)). The Court stated that, under Section 1225(b)(1), “Qasemi is subject to mandatory detention only if he falls within the categories of noncitizens subjected to expedited removal—that is, if he is either (1) an arriving alien or (2) is described in clause (iii) of that section.” *Id.* The Court held that, while Qasemi is an “applicant for admission” within the meaning of Section 1182(d)(5)(A), he is not a noncitizen “arriving in the United States” within the meaning of Section 1225(b)(1)(A)(i). *Qasemi* at 11-12. The Court went on to state:

Petitioner is an “applicant for admission” because he “has not been admitted.” 8 U.S.C. § 1225(a)(1). Parole is “not regarded as an admission” to the United States. 8 U.S.C. § 1182(d)(5)(A). It does not follow, however, that Petitioner is “arriving in the United States.” 8 U.S.C. § 1225(B)(1)(A)(i). He has already arrived, was paroled, entered, and has now been present in the United States for over a year. None of that is changed by the fact that he has not been formally admitted.

The Court relied on an earlier decision in *Tumba v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) where it was held that a noncitizen already physically present in the United States, irrespective of whether they presented themselves at the border, does not qualify

as “seeking admission” because they are already in the country. *Id.* at *3–4. In reaching that conclusion, the Court cited to the fact that the DHS has long understood the term “applicant seeking admission” to be synonymous with “arriving alien.” *Id.* at *4 (citing *Lopez Benitez v. Francis*, 795 F.3d 475, 489 (S.D.N.Y. 2025)). The Court went on to state:

If a noncitizen who is physically present in the United States and who entered the United States without encountering border authorities is not “seeking admission,” and an applicant “seeking admission” is similarly positioned to one arriving, it necessarily follows that a noncitizen paroled into the country—i.e., a noncitizen residing in the United States—is not an arriving alien. A contrary conclusion would lead to a senseless outcome; the noncitizen like Qasemi who is present and entered the country through a lawful process would still be “arriving” in the country, whereas one who entered without any inspection or without any process whatsoever would not. See *Aviles-Mena v. Kaiser*, 2025 WL 2578215, at *5 (N.D. Cal. Sept. 5, 2025).

Qasemi at 14.

The Court went on to analyze the second category of noncitizens purportedly subject to mandatory detention under Section 1225(b)(1):

Petitioner does not fall within the other category of noncitizens subject to mandatory detention under Section 1225(b)(1)—those described under subsection (b)(1)(iii)(II) of Section 1225. Subsection (b)(1)(iii)(II) explains that mandatory detention applies to a noncitizen who (1) “has not been admitted or paroled into the United States” or (2) “has not affirmatively shown, to the satisfaction of an immigration officer, that [he] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. §

1225(b)(1)(iii)(II). Removing the negative, the statute states that if a noncitizen has *either* been “admitted or paroled,” or has been continuously in the United States for “a two-year period prior to a determination of inadmissibility,” the noncitizen is not subject to expedited removal (and the accompanying mandatory detention regime of Section 1225(b)(1)).

Qasemi at 14-15.

With respect to the wording that states that, upon termination of parole, the noncitizen be “returned to the custody from which he was paroled,” the Court found that such wording does not mean a return to physical custody. “The law and the statute draw a distinction between ‘detention’ and ‘custody.’ ‘Custody’ does not necessarily mean physical custody. It concerns any status under which a person or thing is under ‘the care and control of [another] for inspection, preservation or security.’ *Qasemi* at 19-20, citing *Black’s Law Dictionary* 390 (7th ed. 1999). The court noted the contrast with “detention” or “detain,” which Congress uses frequently. *See also Khabazha v. ICE*, 2025 WL 3281514, at *3 (S.D.N.Y. Nov. 25, 2025) (For the purposes of “custody” in the habeas statute, 28 U.S.C. § 2241, the custody requirement “may be satisfied by restraints other than ‘actual, physical custody’ incarceration.”) (quoting *Vega v. Schneiderman*, 861 F.3d 72, 74 (2d Cir. 2017))). Nor could custody mean physical custody in Section 1182(d)(5)(A), as the statute does not of its own form “affirmatively authoriz[e] detention, much less indefinite detention.” *Clark v. Martinez*, 543 U.S. 371, 385 (2005).

CONCLUSION

Petitioner believes the *Qasemi* court got it right on this issue and Petitioner, who is not “seeking admission” can only be held by ICE under Section 1226(a) and is thus entitled to a bond hearing.

Dated: December 22, 2025

/s/ Matthew K. Borowski

Matthew K. Borowski
Attorney for Petitioner
4343 Union Road,
Buffalo NY 14225
E-mail: matthew@borowskilaw.com
Tel: 716-330-1503