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

Zhi YE,

Petitioner,

– against –

Raul MALDONADO, Warden of the Brooklyn Metropolitan Detention Center; Judith Almodovar, Acting Director of the New York City Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General,

Respondents.

No. 25-cv-6417 (AMD)

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Zhi Ye, Petitioner, has brought an action in habeas corpus challenging his detention without process under the wrong immigration detention statute. On December 3, 2025, the Government filed its response, which consists of a memorandum of law in opposition, Dkt. No. 8, and a single exhibit, Dkt. No. 8-1. Petitioner hereby submits the instant reply, and urges this Court to reject the Government's arguments and order his immediate release.

I. The Court should have little difficulty dispensing with the bulk of the Government's arguments, which it recycles here notwithstanding their rejection hundreds of times in the space of mere months.

Broadly speaking, there are two issues in this case: the constitutional issue (Does Petitioner, previously granted his liberty, possess any due process rights with respect to that liberty?) and the statutory issue (Is Petitioner subject to mandatory detention under 8 U.S.C. § 1225, or discretionary detention under section 1226?). So too, the Government's arguments can be sorted into two main

buckets: those which have been rejected by hundreds of courts already, and those which are basically absurd attempts to argue its way around those hundreds of losses.

With respect to its statutory arguments, the Government seems to concede that it is not playing an especially strong hand. While it meekly offers that "[s]everal courts have endorsed" its position, Dkt. No. 8 at 10, it is later forced to "recognize[] that" a shocking majority "have disagreed," *id.* at 14, such that one recent survey "identifies *350 decisions* that reject Respondents' reading of the INA," *id.* at 14 n.2 (citing *Barco Sandoval v. Francis*, No. 25 Civ. 6582 (LAK), ECF No. 28, App. A (S.D.N.Y. Nov. 26, 2025) (collecting cases)) (emphasis added). The Government has not identified a single decision in this Circuit which supports its view. In the interest of expediency, we will not rehash the general arguments here, and simply urge the Court to adopt the reasoning of Judge Kaplan in *Barco Sandoval*, 25 Civ. 6582, ECF No. 28 at 9–24, as well as Judge Choudhury in *Rodriguez-Acurio v. Almodovar*, No. 25 Civ. 6065 (NJC), ___ F. Supp. 3d ___, 2025 WL 3314420, at *22–24 (E.D.N.Y. Nov. 28, 2025). These decisions are quite recent, well-reasoned, and based on thorough surveys of the relevant case law. As a result, they are responsive to the bulk of the Government's arguments here. We write briefly, however, to address the Government's more novel counterarguments.

Aside from remarking generally that the 350-plus decisions to the contrary are "unpersuasive," and "suggest[ing] that this Court follow the reasoning of" a Wisconsin case instead, Dkt. No. 8 at 15–16 (citing *Rojas v. Olson*, 25 Civ. 1437 (BHL), 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025)), the Government makes two specific counterarguments, both of which are directed at the conclusion—reached in hundreds of cases—that its reading of section

1225(b)(2) would essentially nullify a recent amendment to section 1226(c), *i.e.*, the Laken Riley Act ("LRA").[1] Both counterarguments are meritless.

For one thing, while the Government acknowledges some "'[r]edundancies'" that would result from its interpretation, it argues that "§ 1226(c) still does independent work, despite the overlap, by preventing the Executive from releasing the specified criminal aliens on parole." Dkt. No. 8 at 18 (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)) (alteration in Dkt. No. 8). The idea, presumably, is that an individual might be simultaneously subject to less-mandatory mandatory detention under section 1225(b), which generally allows for parole, but *also* subject to more-mandatory mandatory detention under 1226(c), which cuts off the parole option. This belt-and-suspenders theory fails because "[s]ections 1225 and 1226 are 'mutually exclusive.'" *Rodriguez-Acurio*, 2025 WL 3314420, at *24 (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485

[1] Congress in the LRA amended section 1226(c) to provide for the mandatory detention of any individual who both "is inadmissible under paragraph (6)(A), (6)(C), or (7) of [INA] section 212(a)," 8 U.S.C. §1182(a), "and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another." LRA § 2. But if we accept the Government's reading of section 1225, then individuals covered by most of the cross-referenced paragraphs of section 1182(a) would *already* have been subject to mandatory detention under section 1225(b). *See Gomes v. Hyde*, 25 Civ. 11571 (JEK), ___ F. Supp. 3d ___, 2025 WL 1869299, at *7 (D. Mass. Jul. 7, 2025) ("After all, a noncitizen who is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), or who lacks requisite documentation, *id.* § 1182(a)(7), is unlikely to prove to an examining immigration officer that he 'is clearly and beyond a doubt entitled to be admitted.'" (quoting 8 U.S.C. § 1225(b)(2)(A))). The LRA is not a lengthy piece of legislation. It consists entirely of this new mandatory detention ground, *see* LRA § 2, together with a series of jurisdictional amendments designed to waive sovereign immunity in order to permit state attorneys general to sue the federal government over its release decisions, *see id.* § 3. So, it is little exaggeration to say that holding "that § 1225 applies to noncitizens who are arrested on a warrant while residing in the United States would render § 1226(c)(1)(E)'s criminal conduct requirement superfluous, thereby 'nullify[ing] a statute that Congress enacted this very year.'" *Artiga v. Genalo*, 25 Civ. 5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (quoting *Gomes*, 2025 WL 1869299, at *7 ("Such an interpretation, which would largely nullify a statute Congress enacted this very year, must be rejected.")) (alteration in *Artiga*).

(S.D.N.Y. 2025)). Indeed, up until seemingly just now, that had been the Government's *own position*—expressed in both federal litigation and administrative precedent. *See Lopez Benitez*, 795 F. Supp. 3d at 485 (noting "there is no dispute that the provisions at issue here are mutually exclusive"); *see also Matter of Q. Li*, 29 I&N Dec. 66, 69 n.4 (BIA 2025) ("Once an alien is detained under section [1225](b), DHS cannot convert the statutory authority governing her detention from section [1225](b) to section [1226](a).").

Alternatively, the Government argues that the LRA "*may* apply to situations where § 1225 *might* not." Dkt. No. 8 at 18 (quoting *Mejia Olalde v. Noem*, 25 Civ. 168 (JMD), 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025)) (emphasis added). Specifically, the Government suggests the LRA "may apply to inadmissible aliens who were admitted in error." *Id.* The Government does not attempt to argue that an individual who either has no valid entry documents (8 U.S.C. § 1182(a)(7)(A)(i)(I), (a)(7)(B)), or who has already physically entered the United States without applying for admission at a port of entry (section 1182(a)(6)(A)(i)), might be be "admitted" under section 1101(a)(13)(A) (that is, effect a "lawful entry . . . into the United States after inspection and authorization by an immigration officer"). Instead, it hypothesizes that individuals might be simultaneously "admitted" and "inadmissible" if their entry was based on fraud or mistake (section 1182(a)(7)(A)(i)(II), (a)(6)(C)). Fair enough, then: *Maybe* its reading of section 1225(b)(2) nullifies the LRA only *almost* entirely. But respectfully, it is preposterous to suggest that Congress would dust off the INA for the first time in twenty years[2] in order to pass an immigration detention reform which applies only to Schrodinger's cat.

[2] Prior the passage of the LRA, Congress had most recently tweaked the immigration code as part of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231.

II. On both the statutory and constitutional fronts, the Government is betrayed—repeatedly—by its own words.

In its memorandum, the Government notes that its "agents detained Petitioner pursuant to an ICE warrant," Dkt. No. 8 at 1, and that "Petitioner was arrested pursuant to a warrant" as "authorized under the INA," *id.* at 2; *see also* Dkt No. 8-1 at ¶ 10 ("Upon arrest, ICE served Petitioner with a Warrant for Arrest of Alien (Form I-200[]).."). Of course, the Government in its response materials has not seen fit to provide the Court with a *copy* of that warrant (more on that in a moment) but crucially, the mere *existence* of such a warrant, standing alone, is evidence that the Government knowingly detained Petitioner pursuant to 8 U.S.C. § 1226. After all, section 1225 arrests are accomplished *without* warrants. *See Q. Li*, 29 I&N Dec. at 70 ("Section [1226](a) 'applies to aliens already present in the United States' and 'authorizes detention only on a warrant issued by the Attorney General leading to the alien's arrest.' By contrast, section [1225](b) 'applies primarily to aliens seeking entry into the United States' and authorizes DHS to 'detain an alien without a warrant at the border.'" (citations and emphasis omitted; alteration adopted) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018))).

"Section 1226(a) 'authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings,' *Jennings*, 583 U.S. at 289, 138 S.Ct. 830, and it applies when a noncitizen is 'arrested and detained' '[o]n a warrant issued by the Attorney General,' 8 U.S.C. § 1226(a). That is precisely what occurred here." *Rodriguez-Acurio*, 2025 WL 3314420, at *24 (alteration in *Rodriguez-Acurio*).

Similarly, its constitutional arguments on their own terms are limited to questions of "admission." *See* Dkt. No. 8 at 7 ("Congress exercises 'plenary power to make rules for the *admission* of foreign nationals.'" (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972))

(emphasis added); *id.* ("[T]he power to *admit or exclude* aliens is a sovereign prerogative." (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)) (emphasis added); *id.* at 8 ("[A]pplicants for admission, like Petitioner, lack any constitutional due process rights *with respect to admission* aside from the rights provided by statute." (emphasis added)). But Petitioner, like the hundreds of unlawfully detained noncitizens who have brought analogous cases, is not currently seeking admission.[3] Let alone is he asking this Court to *review* any determination to admit or exclude him. *Cf. Ozturk v. Hyde*, 136 F.4th 382, 400 (2d Cir. 2025) (distinguishing "between a challenge to detention and a challenge to removal"); *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("Habeas has traditionally been a means to secure *release* from unlawful detention, but [Thuraissigiam] invokes the writ to achieve an entirely different end, namely, to obtain additional administrative review of his asylum claim and ultimately to obtain authorization to stay in this country." (emphasis in original)).

As on other recent occasions, "the Government cites two cases . . . , *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 the so-called "entry fiction" bars review of constitutional claims in the immigration detention context. *Al-Thuraya v. Warden, Orange County Correctional Facility*, No 25 Civ. 2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025); *see also* Dkt. No. 8 at 9 (citing *Poonjani* and *Mendez Ramirez*). "[B]ut both elided the crucial differences between applicants for interim relief . . . , and individuals conclusively denied entry." *Id.* And the weight of authority supports the proposition "that a non-admitted noncitizen is not precluded from

[3] Petitioner *is* actively seeking asylum (though he is not asking this Court to review any aspect of his asylum proceedings). But "[a] grant of asylum is not an 'admission' to the United States under section 101(a)(13)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(13)(A)." *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (first headnote).

seeking the protections of the Due Process Clause where they are granted limited status in the country by the Government and that status was revoked without notice. Put differently, a noncitizen who is neither admitted nor denied, but who is granted permission to live in the United States, is protected by the Due Process Clause." *Rojas Acevedo v. Almodovar*, 25 Civ. 7189 (LJL), 2025 WL 3034183, at *6 (S.D.N.Y. Oct. 30, 2025) (collecting cases). "The reasoning in these cases follows naturally from the Supreme Court's jurisprudence that a liberty interest, once granted, cannot be revoked without due process." *Id.*

Moreover, the Government has failed to establish even under its own rules that the "entry fiction" applies to Petitioner. By regulation, the Government applies that fiction to *parolees*. *See* 8 C.F.R. § 1.2 ("An arriving alien remains an arriving alien even if paroled pursuant to section [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked."). Some Courts have accepted this theory, at least where it has been uncontested. *See Poonjani*, 319 F. Supp. 3d at 648 ("Petitioner's counsel conceded during oral argument [] that Petitioner remains 'at the threshold of initial entry' for immigration purposes."). However, even assuming that this regulation is valid, *but see Coalition for Humane Immigrant Rights v. Noem*, No. 25 Civ. 872 (JMC), ___ F. Supp. 3d ___, 2025 WL 2192986, at *25 (D.D.C. Aug. 1, 2025) (finding "that regulatory definition to be *ultra vires* to the extent it subjects parolees to expedited removal"), the fact remains undisputed that *Petitioner isn't a parolee.*

III. Notably, the Government has failed to produce the arrest warrant it claims exists—probably because the plain text of the warrant is almost certainly inconsistent with the Government's statutory arguments.

As noted in the previous section, the Government purports to have arrested Petitioner pursuant to a Form I-200 warrant, but it has failed to produce that warrant, probably because the

document on its face is incompatible with its current statutory argument. As reflected on ICE's website. the Form I-200 expressly references section 236 of the INA, 8 U.S.C. § 1226. *See* Immig'n and Customs Enforcement, *Sample Form I-200* (Rev. 09/16), *available at* www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF (accessed Dec. 4, 2025). The absence of an arrest warrant is reason enough to grant immediate release—if the Government cannot produce a warrant, then it cannot establish Petitioner's arrest was lawful. *See* Dkt. No. 1 at ¶ 30 (noting that the applicable statute and regulation require a warrant). At minimum, its failure to produce the warrant is evidence of bad faith. After all, the Government's argument boils down to an assertion that it cannot be bound by its invocation of section 1226 in Petitioner's 2023 release documentation. *See* Dkt. No. 8 at 19 (arguing that "paperwork" citing section 1226 is irrelevant); *see also* Dkt. No. 1-5 (release order citing 8 U.S.C. § 1226). But if the Government's current statements are to be believed, then it was applying section 1226 to Petitioner at least as recently as November 8, 2025. *See* Dkt. No. 8-1 at ¶ 10.

IV. Failing all else, the Government attempts to recharacterize Petitioner's claims—suggesting that they arise under a statute he doesn't cite, and encompass an argument he does not make.

As a last resort, the Government constructs a pair of flimsy straw men, suggesting first that *any* argument that its *own paperwork* should be used as *evidence* in this proceeding is an illegitimate attempt to apply "equitable estoppel." Dkt. No. 8 at 19. As courts in this district have held, "the use of a warrant . . . to arrest and detain Petitioner is *further evidence* that Petitioner could only be detained pursuant to § 1226(a)." *J.U. v. Maldonado*, 25 Civ. 4836 (OEM), ___ F. Supp. 3d ___, 2025 WL 2772765, at *6 (E.D.N.Y. Sep. 29, 2025) (emphasis added); *see also Artiga*, 2025 WL 2829434, at *7; *Hyppolite v. Noem*, 25 Civ. 4304 (NRM), 2025 WL 2829511, at

*8 (E.D.N.Y. Oct. 6, 2025) ("The Court recognizes that Respondents' own initial classification of Hyppolite's detention is not dispositive or controlling here. If Respondents had initially incorrectly classified the detention as mandatory under § 1225(b)(2)(A), and provided Hyppolite with documentation indicating as much, their mistake would not be binding on the Court. However, while the Court agrees with Respondents that this history is 'not controlling,' *see* Oral Argument ('OA') Tr. at 7, it certainly is relevant to the Court's assessment of the credibility and good faith of 'Respondents' new position as to the basis for [Hyppolite's] detention, which was adopted post hoc and raised for the first time in this litigation.'" (quoting *Lopez Benitez*, 2025 WL 2371588, at *5) (alterations in *Hyppolite*))). The Government "respectfully disagree[s] with [these] decisions." Dkt. No. 8 at 20 n.5. It's free to do so. But it is absurd to read a rule of equitable estoppel into holdings that Government documents qualify as "evidence," *J.U.*, *supra*, that is "not dispositive or controlling," *Hyppolite*, *supra*. Rather, these decisions seem to rest simply and permissibly on the longstanding premise that the Government's own documents are "presumptively reliable" and entitled to evidentiary weight. *Vera Punin v. Garland*, 108 F.4th 114, 125 (2d Cir. 2024) (quoting *Felzcerek v. INS*, 75 F.3d 112, 117 (2d Cir. 1996)).

Last, and probably least, the Government inexplicably characterizes Petitioner's statutory arguments as "presumably asserting a violation of the Administrative Procedure Act ('APA'), 5 U.S.C. §§ 701–06." Dkt. No. 8 at 2. The Government notes that "Petitioner's Complaint [sic] asserts that his detention violates the INA," and that "[t]he APA is not the proper vehicle for [such] claims," because "those claims 'fall within the core of the writ of habeas corpus and must be brought in habeas.'" Dkt. No. 8 at 21 (quoting *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025)). And the Government is largely correct: "All the claims in this suit constitute a [sic] core habeas claim [sic] and are not cognizable under the APA." *Id.* Indeed, it is for this very reason that Petitioner

brought his habeas claims in habeas citing the habeas provision, which makes the writ available to individuals "in custody in violation of the Constitution *or laws* or treaties of the United States." 28 U.S.C. § 2241(c)(3) (emphasis added). The Government's argument—that Petitioner's claims brought in habeas must be dismissed because such claims are required to be brought in habeas—appears to be little more than a two-paragraph scrivener's error.

Conclusion

For the reasons discussed herein as well as in the initial Petition, and on the basis of the evidence submitted by Petitioner as well as the evidence conspicuously *not* submitted by the Government, this Court should issue a writ of habeas corpus on the papers directing the Government to immediately release Petitioner.

Dated: December 4, 2025
New York, New York

/s/ Cassandra Esteban Brusi
Attorney for Petitioner