UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Y- C-, an adult,

Petitioner,

v.

KENNETH GENALO, New York Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"),

Respondents

Case No. 25-cv-6558

Agency No. AXXX-XXX-335

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM OF LAW

Relevant facts and procedural history have been stated in Petitioner's Habeas Corpus Petition and Respondents' Memorandum.

Procedural Due Process Violation

The Government argues that any applicant for admission, including those "present" in the US are subject to mandatory detention and are not eligible for bond under 8 U.S.C. § 1225(b)(2)(A). Respondents' statutory construction thus mandates detention of millions of noncitizens currently in the United States, including those who are in process of adjudicating their claims before immigration courts and otherwise complying with all relevant procedures.

Petitioner is a perfect example of a person netted by the DHS in its rampart and indiscriminate enforcement of new policies. Petitioner has a pending asylum application with an immigration court at 26 Federal Plaza, was working with his counsel to prepare his case, and

did not violate any conditions of his release. Yet, he was arrested while dutifully reporting to ICE as required. In its zealous attempt to comply with above-stated statutory construction, ICE is now arresting the easy prey - those who came into their offices or into the hallways of immigration courts.

To justify the ends, Respondents are conflating U.S.C. § 1225(a)(1) and 1225(b)(2), arguing that these two sections overlap but are not superfluous, while insisting that hundreds of recent federal court districts are wrong in their findings. Respondents' understanding is that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6) (which states that those like Petitioner who are present without admission are inadmissible) are already subject to mandatory detention. Respondents do not explain why, if so, Section 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), was even necessary. Respondents argue that "[r]edundancies are common in statutory drafting." However, they are not redundancies if they nullify other statutes.

Respondents' reading of Section 1225 would effectively nullify Section 1226 because if "anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply." *Lopez Benitez*, 2025 WL 2371588, at *8. "If Congress had wished to enact the transformation of the immigration detention system that Defendants contend it did - requiring the detention of millions of people currently living and working in the United States - then it would have said so more clearly." *Rodriguez v. Bostock*, 2025 WL 2782499, at *24 (W.D. Wash. Sept. 30, 2025).

Respondents' counsel admits in its memo that after Petitioner entered into the US, CBP arrested and released him on his own recognizance pursuant to INA § 236(a), 8 U.S.C. § 1226(a), and not under Section 1225(b)(2). Under Section 1226, Petitioner's detention is discretionary rather than mandatory. 8 U.S.C. § 1226(a)(1) ("[P]ending a decision on whether the alien is to be removed from the United States," DHS "may continue to detain the alien."). In February 2024, DHS exercised that discretion and released Petitioner after just a few hours on his own recognizance. The Government "use[s] the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)." *Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1115 (9th Cir. 2007); *see Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011).

For a year and 8 months, Petitioner has been living in the United States on the understanding that he would be arrested and detained under Section 1226 only if he did not attend immigration hearings as required or otherwise showed himself to be a danger. Now, Respondents deem Petitioner as subject to arrest and mandatory detention for an indeterminate period without any showing any change of circumstances, or that his detention was statutorily required or furthered any governmental interest. However, "[a] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226," so if Petitioner was "detained pursuant to one provision, [he] cannot be subject to the other." *Lopez Benitez*, 2025 WL 2371588, at *4.

The Due Process Clause of the Fifth Amendment prevents the Government from depriving any person of "life, liberty, or property without due process of law." *U.S. Const. Amend. V.* "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that [the Due Process] Clause protects."

Zadvydas v. Davis, 533 U.S. 678, 690 (2001). It is well established that such protection extends to noncitizens, including those who are in removal proceedings. *See id.* at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Reno v. Flores*, 507 U.S. 292, 306 (1993).

While the Government may revoke parole of non-citizens, Due Process still requires that Government's discretion must be exercised, that some determination actually be made. Here, "there is nothing to suggest that DHS exercised any discretion at all in detaining" Petitioner. *See Lopez Benitez*, 2025 WL 2371588, at *11; *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025). In this case, Petitioner's re-detention is in violation of the Due Process Clause. *See Valdez v. Joyce*, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) ("[T]he issue here is not the permissibility of immigration detention, but rather the process required in connection with such detention.").

The facts of this matter are identical to many cases of non-citizens who were recently detained by DHS while they are attending immigration hearings and otherwise dutifully complying with all required procedures. Courts have consistently found Due Process violations in such indiscriminate actions by the Respondents. *See, Tumba v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025). Petitioner's re-detention was illegal, and he is entitled to a Writ of habeas corpus and should be immediately released from custody.

Dated: December 16, 2025.

/s/ Vlad Kuzmin

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