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

Dennis Alexander MINARCAJA CONCHA, Petitioner, – against – Todd LYONS, Acting Director of Immigration and Customs Enforcement[1]; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General, Respondents.	No. 25-cv-6695 (NJC)

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

Dennis Alexander Minarcaja Concha ("Petitioner") brings this habeas action seeking his immediate release from unconstitutional and statutorily unauthorized detention by Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1. This Court directed Respondents (hereafter the "Government") to show cause on or before December 9, 2025, why the Petition should not be

[1] Earlier pleadings identify Mr. Lyons as the "*field office* director for U.S. Immigration and Customs Enforcement (ICE) *in New York*." In fact, Mr. Lyons is the acting director of ICE writ large.

granted. *See* Dkt. No. 6.[2] On December 10, 2025, the Government filed a letter "request[ing] leave to file an oversized brief of 32 pages and 12,160 words." Dkt. No. 13; *see also* Dkt. No. 14. Petitioner hereby submits the instant reply.

I. The Government's memorandum mostly consists of recycled arguments that this Court has already determined lack merit.

While the Government's inability to file its response in a timely manner may be read to suggest that an inordinate amount of work went into that submission, the fact is that the Government's memorandum consists almost entirely of arguments seemingly copied and pasted from its submissions in prior cases—arguments this Court ably dispensed with in *Rodriguez-Acurio v. Almodovar*, ___ F. Supp. 3d ___, 2025 WL 3314420 (Nov. 28, 2025).

First, the Government argues that Petitioner, who all agree was released into the United States in 2022 "in accordance with INA Section 236 (codified as 8 U.S.C. § 1226)" pursuant to "an Order of Release on Recognizance Form I-220A," Dkt. No. 14 at 7–8, possesses no constitutional right to due process under the so-called "entry fiction," *see id.* at 10–12.

> [H]owever, Respondents misstate the law. "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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). The Due Process Clause "covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *see also Yamataya v. Fisher*, 189 U.S. 86, 100–01, 23 S.Ct. 611, 47 L.Ed. 721 (1903) (noncitizen who entered the country in violation of the law cannot be "deprived of [her] liberty" without receiving "due process of law"). In habeas proceedings concerning executive detention, courts must conduct "the most searching review" to ensure the legality of detention that "occur[s] without the procedural protections required in courts of law." *Velasco Lopez*, 978 F.3d at 850–51.
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> Contrary to Respondents' contentions, *Thuraissigiam* stands for the limited principle that those "at the threshold of initial entry" stand on a different footing for

[2] In a subsequent order, the Court requested that briefing address the effect, if any, of *Maldonado Bautista v. Santacruz*, No. 25 Civ. 1873 (SSS), 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment); 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) (order certifying class).

> due process purposes than noncitizens "who have established connections in this country." 591 U.S. at 107, 140 S.Ct. 1959. Whereas Rodriguez-Acurio was paroled into the interior of the United States, has been living and working in the United States for more than four years, and has a three-year-old U.S. citizen child (Pet. ¶¶ 2, 16; Lipsitz Aff. ¶ 6), *Thuraissigiam* was "brought by an individual who was apprehended *25 yards* from the border and then was subject to continuous detention," *Aviles-Mena*, 2025 WL 2578215, at *4 (citing *Thuraissigiam*, 591 U.S. at 119, 140 S.Ct. 1959) (emphasis added). Therefore, *Thuraissigiam* "merely held that noncitizens '*in [the] respondent's position*'—those detained close to the border 'shortly after unlawful entry'—have not yet 'effected an entry.' " *Make the Rd.*, — – F.Supp.3d at ——, 2025 WL 2494908, at *11 (quoting *Thuraissigiam*, 591 U.S. at 140, 140 S.Ct. 1959) (emphasis in original).
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> Furthermore, it is also notable that *Thuraissigiam*'s holding concerns only "the right to additional due process sought over admission determinations" and does not "address the due process rights of a noncitizen to remain free once released." *Hyppolite*, 2025 WL 2829511, at *10 (quoting *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *6 (N.D. Cal. Sep. 12, 2025)). Indeed, the Supreme Court made clear that Thuraissigiam sought "a new opportunity to apply for asylum and other applicable forms of relief" and that "[h]is petition made *no mention of release from custody.*" 591 U.S. at 115, 140 S.Ct. 1959 (emphasis added). By contrast Rodriguez-Acurio invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851; *see also Aviles-Mena*, 2025 WL 2578215, at *4 (finding *Thuraissigiam* inapplicable because the petitioner's "habeas petition challenges his detention, not his 'admission' ").

Rodriguez-Acurio, 2025 WL 3314420, at *26–27.[3] And, as this Court did previously, "it is worth putting in perspective the rule they seek." *Id.* at *27. That "rule—that unless and until someone is lawfully admitted, they are entitled to zero process beyond whatever courtesy Congress might offer. If that was right, Congress could subject noncitizens who had spent decades in the United States to immediate removal, without any advance notice or right to a hearing, and the Constitution would have nothing to say about it." *Id.* (quoting *Make the Road*, 2025 WL 2494908, at *11).

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[3] If anything, these constitutional principles apply *a fortiori* to Petitioner here. In *Rodriguez-Acurio*, the Government could also point to a "passing reference in *Thuraissigiam* to 'those paroled elsewhere in the country.'" *Id.* at *26 (quoting 591 U.S. at 140). But all agree that Petitioner was released pursuant to section 1226, and not paroled. *See* Dkt. No. 14 at 7–8.

Second, the Government rehashes its claims that the plain text of 8 U.S.C. § 1225(b)(2), which governs the detention of "applicants for admission" who are also "seeking admission," somehow applies to individuals, like Petitioner, who were permitted to enter the country years ago. *See* Dkt. No. 14 at 13–19. Again, *Rodriguez-Acurio*—which the Government doesn't even address in this section—controls the outcome.

> First, Respondents' position violates the canon of statutory interpretation that "every clause and word of a statute should have meaning" because if Section 1225(b)(2) applied to all "applicants for admission" there would be no need for Congress to have separately referenced a sub-category of persons "seeking admission" in the specific section. *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, 143 S.Ct. 1720, 216 L.Ed.2d 370 (2023). In other words, Respondents' reading of Section 1225(b)(2)(A) would render the phrase "seeking admission" in the statute superfluous. *See Huamani*, 2025 WL 3079014, at *4; *Hyppolite*, 2025 WL 2829511, at *9; *Lopez Benitez*, 795 F.Supp.3d at 487–89.
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> Second, Respondents' interpretation would be "entirely inconsistent with the Laken Riley Act," which "makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions of 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes." *Huamani*, 2025 WL 3079014, at *4; *see also Lopez Benitez*, 795 F.Supp.3d at 489 (reasoning that the same interpretation of Section 1225(b)(2) offered by Respondents here would "nullify" the Laken Riley Act). As several courts have recently explained:
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> > If Section 1225(b)(2) applied to noncitizens who are arrested on a warrant while residing in the United States, it would render Section 1226(c)(1)(E)'s criminal conduct criterion superfluous whenever the noncitizen is inadmissible under Sections 1182(a)(6)(A) or (a)(7). Such an interpretation, which would largely nullify a statute Congress enacted this very year, must be rejected. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 [133 S.Ct. 1166, 185 L.Ed.2d 242] (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").
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> *Huamani*, 2025 WL 3079014, at *4 (citing *Gomes v. Hyde,* No. 25-cv-11571, —— F.Supp.3d ——, ——, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)).
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> Third, Respondents' reading of Section 1225 would "all but read Section 1226 off the books," because if any person who has entered the country unlawfully is subject

> to mandatory detention under Section 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." *Huamani*, 2025 WL 3079014, at *4; *Lopez Benitez*, 795 F.Supp.3d at 490; *see also id.* (reasoning that "there is no indication that Congress intended § 1226 to be limited only to visa overstays").
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> Fourth, "DHS's own regulations understand an 'applicant seeking admission' to be synonymous with an 'arriving alien.'" *Huamani*, 2025 WL 3079014, at *4. And, as I have already explained, the regulations refer to an arriving alien as an "applicant for admission *coming or attempting to come into* the United States." *Lopez Benitez*, 795 F.Supp.3d at 489 (quoting 8 C.F.R. § 1.2) (emphasis in original); *see also Huamani*, 2025 WL 3079014, at *7 (same).

2025 WL 3314420, at *23.

Third, and once more as in *Rodriguez-Acurio*, "Respondents also rely upon the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), where the BIA held that the INA requires that all applicants for admission—including those who have been residing in the United States for years—are subject to mandatory detention under Section 1225(b)(2). However, other courts in the Second Circuit have rejected that holding, and it is not persuasive for all the reasons discussed already. Moreover, after *Loper Bright*, it is the province of the courts—not the BIA—to "authoritatively interpret" the INA." 2025 WL 3314420, at *24 (citations omitted); *see also* Dkt. No. 14 at 19–20.[4]

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[4] The Government's also attempts to characterize some of Petitioner's arguments—and the district court decisions on which they rely—as sounding in equitable estoppel. *See* Dkt. No. 14 at 25–27. 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*))). These decisions do not rely on principles of equitable estoppel, and rather appear to rest simply and permissibly on the longstanding premise that the Government's own

II. Attacks by the Government against the judicial consensus are unavailing.

Eventually, the Government gets around to addressing *Rodriguez-Acurio* (and some of the many, many other cases holding against it) around the twentieth page of its memorandum, in a section titled "*The Contrary Decisions Are Incorrect*." Dkt. No. 14 at 20–25. Like much of the Government's memorandum, it is verbose—but the title pretty much says it all. The Government disagrees with the vast majority of district court decisions, including this Court's decision in *Rodriguez-Acurio*. But it offers no serious argument why those decisions are incorrect (which probably makes sense, because they aren't).

The Government takes issue with the straightforward movie theater analogy in *Lopez Benitez*, arguing that unlawful entrants should still be understood as "seeking admission" because the statute "defines 'admission' not merely as entry, but as [] '*lawful* entry.'" Dkt. No. 14 at 21 (emphasis in original). But this counterargument misses the mark, because the point of Judge Ho's movie theater analogy is not that unlawful and lawful entry are interchangeable, but rather that an individual cannot be said to be "seeking" that which they already have, whether they have it for lawful or unlawful reasons. At the risk of mixing metaphors, a bicycle *thief*, same as a bicycle *purchaser*, has no reason to "seek" a bicycle.

At bottom, the Government's legal theory is the same theory that it broadly announced in *Yajure Hurtado*, and the same theory this Court rejected in *Rodriguez-Acurio*: "applicant for admission" and "alien seeking admission" are synonyms, even though the statute uses both terms

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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)).

in the same sentence. That argument is contrary to basic tenets of textualism, and is addressed in some more detail in the next section.[5]

III. Recent developments in neighboring districts do not detract from this Court's prior reasoning, which remains consistent with the overwhelming weight of authority in this Circuit and beyond.

As the Government vaguely notes, it has secured some "favorable decisions, including in the Second Circuit." Dkt. No. 14 at 20. To be precise, it has secured two: *Ferreira Candido v. Bondi*, No. 25 Civ. 867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); and *Xiaoquan Chen v. Almodovar*, 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025). We will briefly address the reasoning in those decisions.

Ferreira Candido

This case turned entirely on whether the statutorily-defined term "applicant for admission" is synonymous with the non-defined term "alien seeking admission," even though *both* terms appear in the relevant paragraph, which provides that "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an *alien seeking admission* is

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[5] The Government also tries to talk its way around the obvious surplusage problem posed by the Laken Riley Act. It suggests that this recent amendment to 8 U.S.C. § 1226(c) is not nullified by its interpretation of 1225(b)(2), because the amendment can be read as merely preventing individuals covered by both sections from being released on parole. 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 (S.D.N.Y. 2025)). Indeed, that has been the Government's *own position*—expressed not only in federal litigation but also in its binding 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).").

not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a," 8 U.S.C. § 1225(b)(2)(A) (emphasis added).[6]

Judge Sinatra reasoned that "the terms are synonyms," and did so for two reasons. *Ferreira Candido*, 2025 WL 3484932, at *2. The first is based on statutory context, and the other on ordinary meaning. Both arguments have obvious flaws which have been addressed in more thoroughly reasoned decisions by courts reaching the majority view on this issue.

"First, the alteration in terms is repeated in similar fashion, such that '[a]ll aliens . . . who are applicants for admission *or* otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.'" *Id.* (quoting 8 U.S.C. § 1225(a)(3)) (alterations and emphasis in *Ferreira Candido*). This argument is readily refuted by courts taking the majority view:

> The government's attempt to explain away this verbiage backfires. It points to another part of the statute that reads: "aliens who are applicants for admission or otherwise seeking admission." Dkt. 26 at 9 (citing 8 U.S.C. § 1225(a)(3)). That's supposed to suggest that the two categories are coterminous. But that's not how lists work or how the word "or" works. Its "ordinary use is almost always disjunctive, that is, the words it connects are to be given separate meanings." *Loughrin* [*v. United States*], 573 U.S. [351,] 357 [(2014)] (quoting *United States v. Woods*, 571 U.S. 31, 45 (2013)). Similarly, "otherwise" means "something or anything else." *Otherwise*, Merriam Webster's Collegiate Dictionary (10th ed. 2001). Taken together, "or otherwise" is "used to refer to something that is different from something already mentioned." *Or otherwise*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/or%20otherwise (last visited October 27, 2025). On top of that, this is just another example of the government's construction inviting surplusage into the statute. That Congress chose to include

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[6] Judge Sinatra holds that "there is no reason to apply interpretive canons," and posits that Congress's use of these two distinct terms in the same sentence was an example of sloppy drafting, perhaps "'out of a misplaced pursuit of stylistic elegance.'" *Ferreira Candido*, 2025 WL 3484932, at *3 & n.7 (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* (2012)). Respectfully, we believe that fealty to the text is preferable to homogenizing or "cleaning up" language which Congress chose to include in the law it enacted. *Cf. W. Va Univ. Hosp. v. Casey*, 499 U.S. 83, 101 (1991) (Scalia, J.) ("[I]t is not our function to eliminate clearly expressed inconsistency of policy and to treat alike subjects that different Congresses have chosen to treat differently. The facile attribution of congressional 'forgetfulness' cannot justify such a usurpation.").

> this additional phrase—"seeking admission"—not once but (according to the government) multiple times suggests that it must mean something distinct.

J.G.O. v. Francis, 25 Civ. 7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025).

"Second, 'applicant' and 'seeker' are, indeed, accepted synonyms." *Ferreira Candido*, 2025 WL 3484932, at *2. But this appeal to ordinary meaning misses the mark, because the statute explicitly *does not assign* the phrase "applicant for admission" its ordinary meaning:

> That question is puzzling at first blush. How can an "applicant for admission" not "seek admission?" This oddity is explained by the statutory definition of the phrase "applicant for admission." *See Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 585 (1995) (Thomas, J., dissenting) ("The canon that we construe a statutory term in accordance with its ordinary or natural meaning applies only in the absence of a statutory definition." (cleaned up)). Section 1225(a) defines "applicant for admission" as: "[a]n alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a). That definition doesn't require an application of any sort. All that's needed is presence without admission—in other words, it applies to the great number of undocumented immigrants who currently live here. By contrast, "seeking admission" might mean something more than that—some active desire or process toward admission. J.G.O argues that because he's already here (and so cannot "seek admission"), § 1225(b)(2) can't apply to him. He's right.

J.G.O., *supra*; *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025) ("This understanding accords with the plain, ordinary meaning of the words 'seeking' and 'admission.' For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there.").

The problem with Judge Sinatra's reasoning here is that it relies on a false syllogism: *A* and *B*, all agree, have the same ordinary meaning; and *A* has a statutory definition, one that diverges

from its ordinary meaning; therefore *B*, which has no statutory definition, must not carry its ordinary meaning. But that's not how this works. *See In re Fairfield Sentry Ltd.*, 147 F.4th 136, 167 (2d Cir. 2025) ("'Without a statutory definition,' we rely on 'the phrase's plain meaning at the time of enactment.'" (quoting *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020))).[7]

Xiaoquan Chen

Judge Vyskocil's decision is more comprehensive than Judge Sinatra's, but also more overtly political. It is, at times, difficult to tell who Judge Vyskocil views with greater disdain: her colleagues in the judiciary,[8] or the members of the Biden administration.[9]

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[7] Judge Sinatra's reliance on 8 U.S.C. § 1101(a)(4) is misplaced for seemingly similar reasons. In support of the claim that "applicant for admission" and "alien seeking admission" are synonymous here, he notes that section 1101(a)(4) clarifies that the "term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." *Ferreira Candido*, *supra*. It is not entirely clear how this provision supports the Judge's argument from statutory context, but it seriously impairs his argument from ordinary meaning. An individual who is *already in* the United States cannot, in a literal sense, make an "application for admission into the United States."

[8] *See, e.g.*, *Xiaoquan Chen*, 2025 WL 3484855, at *4–6 ("Ignoring the text and history of the INA, these judges equate mere presence in the United States with 'lawful entry.' . . . Indeed, while purporting to guard against one word of 'surplusage' in the statute, judges in this District would virtually nullify Section 1225(b)(2). . . . By ruling that 'seeking admission' is an additional requirement for mandatory detention, judges in this District establish a perverse system in which an alien becomes subject to harsher treatment only upon actively seeking 'lawful' status. . . . In the hands of certain judges, a law that clearly was enacted to strengthen immigration enforcement transmutes into a reason to defang the law on the books and order the government 'immediately' to 'release' into the country aliens whom immigration officials have concluded are not entitled to remain in the United States. This Court declines to participate in that alchemy." (citation omitted)).

[9] *See, e.g.*, *id.* at *6–7 ("As one sponsor of the Laken Riley Act explained, a young woman was killed by an alien who 'was unlawfully . . . released by the Biden administration' after he illegally entered the country. Similarly, a co-sponsor of the Act in the House of Representatives had argued earlier that 'our immigration laws are now routinely ignored, altered, or perverted by the whims of individuals within this administration.' . . . There is simply no authority for the proposition that if one presidential administration fails to enforce a statute, the next administration cannot enforce it."). At one point, Judge Vyskocil outright ignores a stipulated fact, concluding that there was no evidence Petitioner was lawfully released pursuant to a section 1226 Order of Release on Recognizance (as all parties maintained), because his release was just as likely due to "the Executive Branch failing to enforce" the law. *Id.* at *2 n.1.

Like Judge Sinatra, Judge Vyskocil suggests "that the phrase 'an alien seeking admission' is used as a synonym for 'an alien who is an applicant for admission.'" *Xiaoquan Chen*, 2025 WL 3484855, at *5. She chastises "[t]he judges who reject this reading," noting that they "concede that their reasoning 'might sound counterintuitive,' since 'applying for something' ordinarily is synonymous with 'seeking something.'" *Id.* (quoting *Tumba Huamani v. Francis*, 25 Civ. 8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025)). What Judge Vyskocil fails to contend with is that "[t]his concession . . . does not deter them from reaching their conclusion" for good reason. *Id.* Yes, the result is "counterintuitive," but that is because Congress defined the term "applicant for admission" in a counterintuitive way—labeling as "applicants for admission" individuals who are already here, and thus cannot in a literal sense apply for entry.

In the alternative, Judge Vyskocil holds that even if the statute requires an alien to be actively "seeking admission," having a pending asylum application satisfies this requirement. Judge Vyskocil asserts this argument, apparently concocted *sua sponte*, [10] with great confidence:

> Worse still, as a matter of text and logic, the proposition that someone who is physically present in the country cannot also be "seeking admission" to the United States does not hold water. In this case, as in *Lopez Benitez, J.G.O.*, and *Tumba*, Petitioner filed an application for asylum. Pet. ¶ 2; *Lopez Benitez*, 2025 WL 2371588, at *1 (Petitioner "filed an asylum application"); *J.G.O.*, 2025 WL 3040142, at *1 (Petitioner "applied for asylum"); *Tumba*, 2025 WL 3079014, at *1 ("Petitioner has a pending asylum application."). Yet the judges in those cases never explain why seeking asylum is insufficient to meet their purported requirement, under 1225(b)(2), that an alien engage in "some active desire or process toward admission." *J.G.O.*, 2025 WL 3040142, at *3; *see Lopez Benitez*, 2025 WL 2371588, at *6; *Tumba*, 2025 WL 3079014, at *4. If actively "seeking admission" is a distinct requirement for mandatory detention pursuant to 1225, seeking asylum *is* "seeking admission," within the meaning of the statute, since "admission" is defined in terms of "lawful" status, 8 U.S.C. § 1101(a)(13)(A), not physical presence on U.S. soil.

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[10] Having conferred with petitioner's counsel in *Xiaoquan Chen*, the undersigned is in a position to know that this argument was not made by the Government in that case. The scale of its error illustrates the pitfalls of failing to adhere to principles of party presentation.

Id. at *6 (emphasis in original). The problem? It is flatly wrong. "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); *see also Bare v. Barr*, 975 F.3d 952, 974 (9th Cir. 2020) ("[A]s 8 C.F.R. § 1208.24(g) indicates, an alien's status as 'an applicant for admission' continues after the alien has been granted asylum." (citing *Matter of V-X-*, 26 I&N Dec. at 150 ("[A]lthough the [alien's] grant of asylum conferred a lawful status upon him, it did not entail an 'admission.'"))). Contrary to Judge Vyskocil's misreading of the INA, "admission" is not defined in terms of "lawful *status*"—it is defined in terms of "lawful *entry*." *See* 8 U.S.C. § 1101(a)(13)(A). So, a grant of asylum to an alien already physically present in the United States cannot and does not count.

With respect to the Laken Riley Act problem, Judge Vyskocil argues the LRA "fills a gap" by "mandat[ing] detention" of an individual who is inadmissible under the cross-referenced provisions of section 1182(a), but simultaneously and notwithstanding that inadmissibility "is determined by an examining immigration officer to be clearly entitled to be admitted." *Xiaoquan Chen*, 2025 WL 3484855, at *7. At best, this argument suggests that the Government's reading renders the LRA only *mostly* a dead letter, by limiting its application exclusively to visa fraudsters or beneficiaries of dramatic governmental error.

At base, the trouble with Judge Vyskocil's LRA analysis is that it eschews text in favor of legislative intent. Judge Vyskocil notes that "the legislative history of the Laken Riley Act makes clear[] [that] many members of Congress 'thought it necessary' to enact a new law mandating detention in more circumstances because of their perception that the Executive Branch had failed to enforce the detention options that were already available to it," and laments that "[i]n the hands of certain judges, a law that clearly was enacted to strengthen immigration enforcement transmutes

into a reason to defang the law on the books." *Xiaoquan Chen*, 2025 WL 3484855, at *6. But it is not the hundreds of other judges who are wrong here for failing to honor "legislative history." Rather, they simply appear to have gotten the memo that Judge Vyskocil must have missed: "[W]e're all textualists now." *Rodriguez-Acurio*, 2025 WL 3314420, at *20 n.13 (quoting *Loper Bright*, 603 U.S. at 443 n.6 (Gorsuch, J., concurring)); *see also W. Va. Univ. Hosp.*, 499 U.S. at 100 ("Where a statutory term presented to us for the first time is ambiguous, we construe it to contain that permissible meaning which fits most logically and comfortably into the body of both previously *and subsequently enacted* law." (emphasis added)).

IV. Petitioner has not been shown to have violated the terms of his release, let alone has the Government established that any such violation is the basis for his current detention.

One argument—the Government's last—appears to be more than simply recycled detritus from its hundreds of district court defeats. Here, the Government argues that Petitioner's detention is justified—and that his case is distinguishable from *Rodriguez-Acurio*—because he actually *did* violate the terms of his supervised release. *See* Dkt. No. 14 at 27–28.

Specifically, the Government explains, the release order stated "that Petitioner 'must not violate any local, State or Federal laws or ordinances.'" *Id.* at 8. And the Government maintains that Petitioner did not adhere to this condition, because "[o]n September 30, 2025, Petitioner was arrested by the New York City Police Department for Possession of a Forged Instrument in the 3rd Degree Pursuant to New York Penal Law § 170.20,[11] a class-A misdemeanor, as well as multiple Vehicle and Traffic Law infractions," and [o]n November 17, 2025, Petitioner was again arrested

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11 "A person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument." N.Y.P.L § 170.20.

. . . for Possession of a Forged Instrument." *Id.* at 8–9. The Government concedes that "[t]he status of these charges is presently unknown." *Id.* at 9.

This argument fails for, at minimum, three reasons.

First, the premise is false, or at least unproven. There has been no showing in this litigation that Petitioner actually violated the terms of his release order. Let alone was any such showing made in whatever pre-detention "process" the Government claims it afforded him.[12] As the Government concedes, it is unable to produce *any* documentation to suggest that Petitioner has even been charged with—much less found to have committed—any criminal offense. Indeed, the Government's sole witness appears to misunderstand the terms of Petitioner's release. In an affidavit, he explains that the "Order of Release on Recognizance was cancelled because [Petitioner's] *arrest* violated the terms of his [r]elease." Dkt. No. 14-1 at ¶ 13 (emphasis added). But the release order does not say Petitioner must "avoid arrests." It states that he may not violate any laws. And an arrest alone does not establish a violation.

Second, even if the premise were true, it has not been shown that any violation by Petitioner materially increased his dangerousness or otherwise justified revisiting the Government's earlier determination that he was not a flight risk. By its literal terms, the release order, which extends to "violat[ions]" of "local . . . ordinances," Dkt. No. 14 at 8, would extend to acts of lawbreaking as insignificant as jaywalking or double parking. It is not sufficient for the Government to point to some—any—violation of law. Under the Constitution, the Government was required to address "any change in circumstances" as part of "an individualized assessment into whether [Petitioner] poses a flight or public safety risk." *Rodriguez-Acurio*, 2025 WL 3314420, at *30 (internal

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12 The Government's submission is unclear on what process, if any, was provided. *See* Dkt. No. 14-1 at ¶ 13 (stating without elaboration that the detention was effected "[a]fter reviewing all relevant information and following all procedures").

quotation marks omitted). Even if Petitioner had been shown to have violated State law (he hasn't been, at least not on this record), the Government has not established that any violation was such that it merited revisiting its earlier determination that he was neither a public safety nor flight risk. Indeed, the Government's evidence indicates that no such assessment was made, as the affiant officer appears to suggest that any "arrest" is automatic grounds for "cancel[ation]" of his release. Dkt. No. 14-1 at ¶ 13.

Third, on the Government's own logic, the arrest would not have played any role in its decision to detain Petitioner, suggesting that Petitioner's de minimis criminal history is little more than a post-hoc justification it is offering as part of this litigation. According to the officer, Petitioner was "detained pursuant to INA section 235(b)(2)(A), 8 U.S.C. [§] 1225(b)(2)(A)." *Id.* at ¶ 14. If that's true, then it would not be necessary to "cancel[]" Petitioner's "Order of Release on Recognizance." *Id.* at ¶ 13. Individuals subject to detention under section 1225 are ineligible for release on recognizance. *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (detainees held under the authority of section 1225 may only be released on parole). So, these two statements by the Government's sole witness, made in consecutive paragraphs of his declaration, are inconsistent as to the reason for Petitioner's detention. If Petitioner was truly detained under section 1225 (as the Government strenuously asserts, *see* Dkt. No. 14 at 13–27), then his Order of Release on Recognizance must have been void *ab initio*. Any purported justification for "cancel[ing]" that order would appear to be a pretext for the Government to do exactly what it is asserting that it did: detain Petitioner (unlawfully) under section 1225.

V. Petitioner is not a *Bautista Maldonado* class member.

As the Government correctly notes, Petitioner is not a member of the class certified in *Bautista Maldonado*. The class were limited to those who "were not or will not be apprehended

upon arrival." 2025 WL 3288403, at *1. Petitioner was apprehended upon his arrival in the United States, so he is not a class member. Whatever the impact of the litigation may be on class members,[13] Petitioner isn't one. As such, *Bautista Maldonado* has no impact in the instant case, except insofar as it constitutes one more drop in the ocean of jurisprudence emphatically rejecting the Government's novel statutory claims.

Conclusion

As explained in this Court's recent opinion in *Rodriguez-Acurio*, "ICE caused [Petitioner] to be placed in custody in violation of h[is] rights to procedural due process. The proper remedy for that unlawful detention is release." 2025 WL 3314420, at *32. The Government's efforts to distinguish or undermine *Rodriguez-Acurio* are unavailing. "Therefore, 'disposing of the matter as law and justice require' necessitates [Petitioner's] release from detention and relief guarding against h[is] re-detention." *Id.* (quoting 28 U.S.C. § 2243).

Dated: December 10, 2025
Kew Gardens, New York

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[13] The Government argues for technical reasons that the class certification is without legal effect. *See* Dkt. No. 14 at 29–32.