UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Elvis Geovanni DIAZ-ESQUIBEL

Petitioner,

– against –

LaDeon FRANCIS, New York Field Office Director for U.S. Immigration and Customs Enforcement; Heriberto Tellez, Warden of Metropolitan Detention Center (MDC) Brooklyn; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

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Case No. 26-cv-00586 (RER)

PETITIONER ELVIS GEOVANNI DIAZ-ESQUIBEL'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HIS PETITION FOR A WRIT OF *HABEAS CORPUS*

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INTRODUCTION

Petitioner, Elvis Geovanni Diaz-Esquibel has been unlawfully detained by Respondents since January 4, 2026. Recognizing that he posed neither a danger nor a flight risk, Respondents themselves released Mr. Diaz-Esquibel on his own recognizance over two years ago. Although nothing has changed in Mr. Diaz-Esquibel's conduct or circumstances, they now seek to snatch away his liberty indefinitely—not because of anything that he did. Mr. Diaz-Esquibel lived in the United States without incident upon his release on October 5, 2023, until Respondents summarily re-detained him at an ICE "Check-In" on January 4, 2026. Respondents do not dispute that; they make no arguments regarding Mr. Diaz-Esquibel's conduct in the United States at all. Their prior determination that Mr. Diaz-Esquibel is not a danger, and is not a flight risk still holds true.

Respondents ***propound no individualized reason to re-detain him***. Indeed, the vast majority of their substantive arguments are not in their filing drafted for Mr. Diaz-Esquibel's case at all, but in a brief Respondents' incorporate from another case before this Court, *Chander v. Maldonado*, No. 26-CV-21 (RER) (E.D.N.Y.). Notably, Your Honor rejected Respondents' arguments in that case too, granting *habeas corpus* to the petitioner in *Chander*, and ordering his immediate release. *See Chander*, No. No. 26-CV-21 (RER), ECF Doc. 10.

Instead, Respondents assert that Mr. Diaz-Esquibel no longer has a right to liberty, bond, or due process, simply because Respondents have changed their mind about what statute they seek to apply to his case. Respondents claim that a statute—one that has never applied to him during his more than two years in the United States—now requires his mandatory (no-bond) detention. This Court rejected Respondents' statutory and constitutional arguments, as have hundreds of other district courts across the country in the last several months. *See Chander*, No. No. 26-CV-21 (RER), ECF Doc. 10; *Arango v. Genalo*, No. 25-CV-6720 (RER), 2025 WL 3637500, at *2

(E.D.N.Y. Dec. 16, 2025) (granting the petition a writ of *habeas corpus*, rejecting an analogous argument made by Respondents, explaining that: "there is no indication in the record that a custody determination was made before or contemporaneous with Arango's December 3, 2025, arrest. This is a violation of Arango's due process rights. . . . *before* the Government may exercise such discretion to detain a person, Section 1226(a) and 8 C.F.R. 1236.1(c)(8) require ICE officials to make an individualized custody determination.") (emphasis in original; quotation marks and citations omitted).

Respondents' actions also clearly violate Mr. Diaz-Esquibel's Fifth Amendment due process rights. Re-detention without notice, without individualized decision-making, and without review by a neutral adjudicator cannot survive constitutional scrutiny. Respondents offer no reason to conclude otherwise.

Accordingly, Petitioner Elvis Geovanni Diaz-Esquibel respectfully requests that this Court grant his petition for a writ of *habeas corpus*, and order his immediate release.

FACTUAL BACKGROUND

The salient facts in this case are undisputed. Mr. Diaz-Esquibel entered the United States without inspection on or about October 3, 2023. *See* Pet. ¶ 22; Opp. at 1. Respondents initially briefly detained him, but within two days, on or around October 5, 2023, Respondents released Mr. Diaz-Esquibel on his own recognizance pursuant to 8 U.S.C. § 1226(a). *See* Pet. ¶ 23; Opp. at 1-2.[1] Mr. Diaz-Esquibel was later detained by Respondents on January 4, 2026, at an ICE "Check-In" at 26 Federal Plaza in Manhattan, purportedly pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* Opp. at 2.-3. Notably, Respondents do not dispute that they failed to provide Mr. Diaz-

[1] Mr. Diaz Esquibel's Petition for a Writ of *Habeas Corpus*, ECF Doc. 1, is cited herein as "Pet." Respondents' Memorandum of Law in Response to the Petition for Writ of *Habeas Corpus*, ECF Doc. 4, is cited herein as "Opp."

Esquibel notice and an opportunity to be heard prior to his re-arrest. Nor do they assert that Mr. Diaz-Esquibel's conduct or factual circumstances precipitated his current detention.

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention: Courts In This District And Throughout The Country Have Repeatedly and Emphatically Rejected Respondents' Precise Argument

Respondents expressly rely on 8 U.S.C. § 1225(b)(2)(A), to argue that Mr. Diaz-Esquibel is "subject to mandatory detention." Opp. at 2. And although he was summarily ***detained without process*** on January 4, 2026, Respondents nonetheless assert that he "has received all the process he is due and that he is not entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a)." *Id.*

Respondents are simply wrong. They are wrong about the statutory authority on which they rely to indefinitely detain Mr. Diaz-Esquibel. And they are wrong about the Constitution: Fifth Amendment due process unequivocally requires more to deprive a person of his liberty. Respondents' own determinations in releasing Mr. Diaz-Esquibel in 2023, when he originally entered the United States, demonstrate as much.

The question of Mr. Diaz-Esquibel's detention is governed by 8 U.S.C. § 1226(a). That statute requires:

> [T]he Attorney General, or its designated officers, may "arrest" or "detain" a noncitizen pending a removal decision. But *before* the Government may exercise such discretion to detain a person, Section 1226(a) and 8 C.F.R. 1236.1(c)(8) require ICE officials to make an individualized custody determination." "ICE must allow the noncitizen to demonstrate to the satisfaction of the officer that . . . release would not pose a danger to property or persons, and that the noncitizen is likely to appear for any future proceeding.

Arango, No. 25-CV-6720 (RER), 2025 WL 3637500, at *2 (quotation marks and citations omitted); *accord Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983, at *4 (S.D.N.Y. Dec. 8, 2025) (holding that a petitioner who entered without inspection and was released on his own recognizance at the border would fall under § 1226(a) rather than § 1225(b)(2) "based

on a close reading of the two relevant statutory provisions, as over 350 district courts to have considered the administration's new position have similarly held.") (collecting cases). It is pursuant to § 1226(a) that Mr. Diaz-Esquibel was released on his own recognizance more than two years ago, in October 2023.

Respondents' argument that a different statute, 8 U.S.C. § 1225(b)(2)(A), suddenly mandates Mr. Diaz-Esquibel's detention is simply wrong. As courts have recognized, in contrast to Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S. 583, 289 (2018), Section 1225(b) only governs detention of noncitizens ***seeking entry*** into the United States (*i.e.*, "applicants for admission"). In other words, the detention provisions of § 1225(b) apply only to a narrow subset of individuals who, unlike Mr. Diaz-Esquibel, have yet to enter the United States. Pet. ¶¶ 34-43.

Since Respondents adopted their new reading of § 1225 to require mandatory detention, almost every district court that has confronted this issue "has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1304 (W.D. Wash. 2025).

This Court's decision *Chander* is in good company. Hundreds of federal district courts across the country have outright rejected the position Respondents are now taking. These courts include (but are not limited to) the following from this district, and the districts immediately neighboring the Eastern District of New York:

- **Eastern District of New York**: *Crespo Tacuri v. Genalo*, 25-CV-06896 (NCM), 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026); *Ulloa Montoya v. Bondi*, 25-CV-06363 (JMA), 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025); *Padilla Molina v. Deleon*, 25-cv-06526 (JMA), 2025 WL 3718728 (E.D.N.Y. Dec. 23, 2025); *Ye v. Maldonado*, No. 25-cv-6417 (AMD), 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *Rodriguez- Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420 (E.D.N.Y.

Nov. 28, 2025); *O.F.B. v. Maldonado*, No. 25-cv-6336 (HG), 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025); *Artiga v. Genalo*, No. 25-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *J.U. v. Maldonado*, No. 25-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025).

- **Southern District of New York**: *Arana v. Arteta*, No. 26-cv-240 (GHW), 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026); *Lopez v. Noem*, No. 26-cv-345 (JHR), 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026); *Sun v. Almodovar*, No. 25-cv-9262 (PKC), 2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025); *Guzman Cardenas v. Almodovar*, 25-CV-9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025); *Villegas v. Francis*, No. 1:25-cv-09199 (JLR), 2025 WL 3215597 (S.D.N.Y Nov. 18, 2025); *Cuy Comes v. Deleon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *3 (S.D.N.Y. Nov. 14, 2025); *Rueda Torres v. Francis*, No. 25- 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025); *Romero Perez v. Francis*, No. 25- 8112 (JGK), 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025); *Huamani v. Francis*, 25-cv-8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025); *Gonzalez v. Joyce*, No. 25-8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025); *Samb v. Joyce*, No. 25-6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025).[2]

- **District of New Jersey**: *Moreira da Silva v. LaForge*, No 25-17095 (EP), 2025 WL 3173859 (D.N.J. Nov. 13, 2025); *Guaman Naula v. Noem*, No. 25- 16792 (SDW), 2025 WL 3158490 (D.N.J. Nov. 12, 2025); *Vincenz-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D.N.J. Nov. 6, 2025); *Mboup v. Field Off. Dir. of New Jersey Immigr. & Customs Enf't.*, No. 25-16882 (KSH), 2025 WL 3062791 (D.N.J. Nov. 3, 2025); *Alaya Amaya v. Bondi*, No. 25- 16428 (ESK), 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Patel v. Almodovar*, No. 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Lomeu v. Soto*, No. 25-16589 (EP), 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256 (D.N.J. Oct. 23, 2025); *Bethancourt Soto v. Soto*, No. 25-16200 (CPO), — F. Supp. 3d —, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D.N.J. Oct. 21, 2025); *Castillo v. Lyons*, No. 25-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025); *Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025).

[2] Judge Vyskocil's decision in *Chen v. Almodovar*, 1:25-cv-8350-MKV, 2025 WL 3484855, at *3 (S.D.N.Y. Dec. 4, 2025) and Judge Cronan's decision in *Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), are outliers and stand in stark contrast to the hundreds of other judges throughout the country who have ruled to the contrary. *See Yao*, 2025 WL 3653433, at *8 (noting that the legal analysis in *Chen* was "problematic").

Mr. Diaz-Esquibel's *habeas* petition is indistinguishable from the petition this Court granted in *Chander*, and from the hundreds of other petitions granted in the E.D.N.Y., S.D.N.Y., D.N.J., and throughout the country. Indeed, the government's pure reliance on arguments of statutory construction—with no analysis of the particular facts of Mr. Diaz-Esquibel's case—and reliance on a brief from another case previously before this Court to justify its position here, only clarify Respondents' total failure to consider Mr. Diaz-Esquibel's case individually.[3] That violates

[3] The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026), is factually dissimilar. The petitioner there was never released by the government, whereas here, the government affirmatively made the decision in 2023 to release Mr. Diaz-Esquibel as neither a risk of flight nor a danger—before summarily detaining him. *Buenrostro-Mendez* is also out of step with the vast majority of Courts' statutory interpretation. Indeed, the Fifth Circuit referred to the immigrant petitioners' statutory interpretation under §§ 1225 and 1226 (analogous to the arguments here) as "novel"—although that very interpretation had been uniformly accepted by immigration counts, petitioners, and the U.S. government for decades. *Id.* at *1; *compare id.* at *3 ("From 1997 to 2025, successive presidential administrations and many immigration judges treated unadmitted aliens as being subject to § 1226(a) rather than § 1225(b)(2)"). The dissent in *Buenrostro-Mendez* best explains the logical, historical, and interpretive fallacies dooming the Fifth Circuit panel majority's statutory interpretation:

> The Congress that passed [the statutes at issue] would be surprised to learn it had also required the detention without bond of two million people. ***For almost thirty years there was no sign anyone thought it had done so, and nothing in the congressional record or the history of the statute's enforcement suggests that it did***. Nonetheless, the government today asserts the authority and mandate to detain millions of noncitizens in the interior, some of them present here for decades, on the same terms as if they were apprehended at the border. No matter that this newly discovered mandate arrives without historical precedent, and in the teeth of one of the core distinctions of immigration law. ***The overwhelming majority of courts in this circuit and elsewhere have recognized that the government's position is totally unsupported***. Undeterred, the majority and ***the government distort the statutory text***, abstract it from its context and history, ignore the Supreme Court's clearly stated understanding of the statutory scheme, and wave away the agency's previous failure to detain millions of noncitizens as if it were a rounding error.
>
> And for what? The majority stakes the largest detention initiative in American history on the possibility that "seeking admission" is like being an "applicant for admission," ***in a statute that has never been applied in this way***, based on little more than an apparent conviction that Congress *must have* wanted these noncitizens

the applicable statute, § 1226(a), and Mr. Diaz-Esquibel's Constitutional protections, requiring his immediate release.

II. The Record Demonstrates that Section 1226 is the Only Applicable Statute to Whether Mr. Diaz-Esquibel is Subject to Detention

Mr. Diaz-Esquibel's immigration case predates, by several years, Respondents' recent reimagining of the detention statutes. As Respondents concede, after they initially apprehended him in October 2023, DHS determined his custody was pursuant to § 1226. Opp. Ex. D (authorizing detention "in accordance with section 236). At the time, Respondents thus determined that Mr. Diaz-Esquibel was neither a flight risk nor a danger, and thus released him accordingly under § 1226.

That remains true today. Respondents offer no authority permitting them to alternate detention statutes at whim, absent a change in a person's criminal history, or the posture of their removal proceedings. Nor does one exist. "[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226 . . . It therefore follows that if [petitioner] was detained pursuant to one provision, he cannot be subject to the other." *Lopez Benitez*, 795 F. Supp. 3d at 485 (citations omitted).

A. Respondents' Interpretation of its Detention Authority Runs Counter to a Plain Reading of the Statutes

As the vast majority of courts to consider the issue have concluded, Respondents' assertion that Mr. Diaz-Esquibel is now detained under § 1225(b)(2) contravenes both the plain meaning, and structure of the relevant statutes. *See Yao v. Almodovar*, No. 25-CV-9982 (PAE), 2025 WL

> detained—some of them the spouses, mothers, fathers, and grandparents of American citizens.

Buenrostro-Mendez, No. 25-20496, 2026 WL 323330, at *10 (5th Cir. Feb. 6, 2026) (Douglas, J., dissenting).

3653433, at *4 (S.D.N.Y. Dec. 17, 2025) ("[A]s the vast majority of courts to address the point have held, there is a clearly superior textual analysis. It is that noncitizens such as [Petitioner]—who was intercepted at the border, released on his own recognizance pending removal proceedings, and later detained by ICE—are subject to detention under § 1226, not under § 1225.") (collecting cases).

By its own terms, § 1225(b)(2) does not apply here. Courts must ensure "no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). While Respondents stress that Petitioner is an "applicant for admission," they ignore § 1225(b)(2)'s qualifier that such individuals "are seeking admission"—language that "'necessarily implies some sort of present-tense action.'" *Villegas*, 2025 WL 3215597, at *3 (quoting *Lopez Benitez*, 795 F. Supp. 3d at 488). But when Respondents arrested Petitioner, in January 2026, he was already inside the United States (and had been for over two years). His Notice to Appear confirms this: he was charged under 8 U.S.C. § 1182(a)(6)(A)(i) (INA § 212(a)(6)(A)(i)) as someone already "present" in the U.S., and he was not designated as "arriving." *See* Opp. Ex. A. That remains true today. Because Mr. Diaz-Esquibel was (and is) no longer in the act of "seeking" admission, he falls outside the scope of § 1225(b)(2). *See Yao*, No. 25-CV-9982 (PAE), 2025 WL 3653433, at *4 ("The text of [§] 1226(a) clearly covers noncitizens, such as Yao, who earlier entered and are present in the United States.").

Respondents' reliance on *Jennings v. Rodriguez* is misplaced for the same reason: far from directing that all applicants for admission are subject to § 1225(b) detention, the Supreme Court there described classifications made "***at the Nation's borders and ports of entry***, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible," at which time detention may be pursuant to either § 1225(b)(1) or (b)(2). *See Jennings*, 583 U.S.

281, 287 (2018) (emphasis added). Applying those statutes to people who are inside the U.S., entered previously, and are manifestly not "seeking" entry or admission at a border, stretches them beyond the breaking point. *See Zumba v. Bondi*, No. 20c-cv-14626 (KSH), 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025) ("[E]ven if petitioner could be deemed 'an applicant for admission,' under § 1225(a)(1), as respondents claim, []he does not meet the requirements of § 1225(b)(2), because []he was never 'seeking entry' nor inspected by immigration officials.").

Respondents' substitution of § 1225(b)(2) for § 1226 also contravenes the fundamental rule that courts must give "effect, if possible, to every clause and word of a statute," while respecting their overall logic and structure. *See United States v. Jackson*, 964 F.3d 197, 203 (3d Cir. 2020). The repeated use of "may" in § 1226(a)—the statute applicable to Mr. Diaz-Esquibel—plainly signals Congress' intent to establish a discretionary detention framework for those detained pursuant to an administrative warrant. Critically, § 1226(a) also expressly excludes certain "criminal" noncitizens from its discretionary framework—but contains no exclusion for anyone else. "That express exception" to § 1226(a)'s discretionary framework "implies that there are no other circumstances under which" detention is mandated for noncitizens detained pursuant to an administrative warrant. *See Jennings*, 583 U.S. at 300 (emphasis in original); *see also Shady Grove Orthopedic Assocs., v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) ("that Congress has created specific exceptions" to a statute's applicability "proves" that the statute generally applies absent those exceptions).

Moreover, Respondents' interpretation of § 1225(b)(2) renders superfluous a recent amendment to § 1226. The Laken Riley Act[4] created § 1226(c)(1)(E), which mandates detention when a noncitizen is (i) inadmissible for having entered without inspection, engaging in fraud, or

[4] Pub. L. No.119-1, 139 Stat. 3 (2025).

lacking entry documents; "and" (ii) is implicated in certain crimes. 8 U.S.C. § 1226(c)(1)(E). The conjunction "and" means detention is mandatory only if both criteria are satisfied. But under Respondents' theory, § 1226(c)(1)(E) was a meaningless amendment; in their view, all noncitizens who have not been admitted are already subject to mandatory detention under § 1225(b)(2). Because that is neither a permissible nor a plausible reading of the statute, courts in this district, and in most throughout the country, have resoundingly rejected it. *See, e.g., Yao*, 2025 WL 3653433, at *7 ("Because ICE's reading would "largely nullify a statute Congress enacted this very year," it "must be rejected."); *see also Huamani*, 2025 WL 3079014, at *4 ("By Respondents' understanding, 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. Why, then, would Congress have thought it necessary to specifically add a provision making those noncitizens subject to mandatory detention if they are charged with certain crimes? The Government has no answer.").

B. *Jennings* Only Supports Mr. Diaz-Esquibel's Argument that § 1226(a) Applies

Respondents' citation to Supreme Court precedent does not help their argument. *Cf. Lopez Benitez*, 795 F. Supp. 3d at 491 (the court could not "identify any authority" supporting Respondents' interpretation of Section 1225(b)); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 222 (D. Mass. 2025) (same). As discussed above, far from supporting Respondents' new theory, the Supreme Court in *Jennings* noted that § 1225(b) custody applies to people at the border "seeking to enter" the U.S.—but it distinguished them from people who, like Mr. Diaz-Esquibel, are already in the United States. For the latter category, it stated that custody under § 1226 is the "default rule." *Jennings*, 583 U.S. at 289. As Judge Hayden of the District of New Jersey observed in applying *Jennings*:

Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either

> seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States. The *Jennings* Court explicitly adopts this distinction, describing § 1225 as the detention statute for noncitizens affirmatively "seeking admission" into the United States, and § 1226 as the detention statute for noncitizens who are "already in the country." 583 U.S. at 289. And although the *Jennings* Court characterizes § 1225(b)(2) as the "catchall" detention provision for noncitizens who are "seeking admission," it identifies § 1226(a) as the "default rule" for the arrest, detention, and release of non-criminal aliens who are already present in the United States. *Id.* at 303.

Zumba, 2025 WL 2753496, at *11. This Court should, like so many others, once again reject Respondents' statutory-switch theory and conclude Petitioner is detained under § 1226(a).[5]

Mr. Diaz-Esquibel was arrested after more than two years of continuous presence in the United States—not while "seeking admission." Further, his pending asylum application is not legally considered a process of "seeking admission." *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 n.7 (S.D.N.Y. Aug. 13, 2025).

Accordingly, and in contrast to Respondents' claims, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Diaz-Esquibel, who have already entered and were residing in the United States at the time they were apprehended. Mr. Diaz-Esquibel's detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in *ultra vires*, and flagrantly so.

III. Respondents Failed to Address the Constitutional Violations Marring Mr. Diaz-Esquibel's Detention

Beyond their statutory-switch, Respondents offer no credible defense for Mr. Diaz-Esquibel's re-detention. Because they have none. As a multitude of courts have recently

[5] *Matter of Yajure Hurtado*, setting out the Executive Branch's "newly-minted interpretation of § 1225(b)(2)(A)," deserves no deference from this Court. *See Zumba*, 2025 WL 2753496, at *9 ("[The BIA's current position is inconsistent with its earlier pronouncements which took the opposite position, and under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not 'remained consistent over time.") (internal quotations and citation omitted).

concluded, including this very Court, summary, and purposeless detention is unconstitutional, and requires a detainee's immediate release. *See Arango*, No. 25-CV-6720 (RER), 2025 WL 3637500, at *2 ("[T]here is no indication in the record that a custody determination was made before or contemporaneous with Arango's December 3, 2025, arrest. This is a violation of Arango's due process rights."); *Chander*, No. 26-cv-21 (RER), ECF Doc. 10 (granting *habeas* where petitioner made similar arguments); *see also Lopez Benitez*, 795 F. Supp. 3d at 498-99. This Court should again find the same.

First, Respondents do not allege Mr. Diaz-Esquibel's re-detention was due to danger or flight risk, the two only lawful bases for immigration detention. Nor can they. His re-detention was transparently part of a nation-wide campaign to detain immigrants *en masse*—the absence of an individualized explanation in this case, and in many similar cases, is glaring. With no lawful justification, Mr. Diaz-Esquibel's re-detention violates his right to substantive due process. *See Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023).

Second, Respondents do not claim they provided Mr. Diaz-Esquibel any notice or process before re-detaining him. The well-known test for constitutionality of process set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), is applicable to due-process challenges, and as recent decisions confirm, the deprivation of Mr. Diaz-Esquibel's liberty interest without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Zumba*, 2025 WL 2753496, at *10 ("Here, the first and second *Mathews* factors weigh heavily in petitioner's favor, as she has been deprived of her liberty, erroneously subjected to mandatory detention under § 1225 during her removal proceedings, and denied due process protections, including the right to seek bond. The third Mathews factor also weighs in her favor as neither the government nor the public has a significant interest in detaining a long-term resident of the United

States with no criminal history who is participating in cancellation of removal proceedings, which are civil in nature."); *accord Arango*, No. 25-CV-6720 (RER), 2025 WL 3637500, at *2 (finding due process violation; "[t]here is no evidence that the immigration officer who issued the arrest warrant, or anyone else, made an independent determination of whether detention was warranted prior to or concurrently with Petitioner's arrest.").

In releasing Mr. Diaz-Esquibel more than two years ago, in October 2023, Respondents made an individualized determination that he was ***not a flight risk*** and ***not a danger***. At that time, Respondents thus released him on his own recognizance, under § 1226. See Pet. ¶ 23; Opp. Ex. C. His summary re-detention on January 4, 2026 without an individualized analysis violates the statute and due process, because, "[a]t a minimum . . . § 1226(a) requires a valid exercise of DHS's discretion." *Lopez Benitez*, 795 F. Supp. 3d at 494.

Rather than confront these facts, Respondents suggest that Petitioner has no constitutional right to challenge his detention. Statutorily, that is wrong. *See supra* §§ I, II. It also runs counter to over a century of Supreme Court caselaw holding that noncitizens present in the United States are entitled to the full panoply of constitutional rights, regardless of whether their presence is lawful or derives from a lawful admission. *See, e.g., Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Respondents attempt to elide these holdings by referencing the limited due-process rights of excludable noncitizens, *Chander* Opp. at 16-17, but excludability was a historical, and limited, legal concept applicable only to individuals who had not entered the U.S. *See Landon*, 459 U.S. at 28 ("only 'entering' [noncitizens] are subject to exclusion"); *Correa v. Thornburgh*, 901 F.2d 1166, 1171 (2d Cir. 1990) (petitioner was subject to exclusion, rather than deportation, because

she "had not effected an 'entry'"). Those who have entered the United States, like Mr. Diaz-Esquibel, have due-process rights—irrespective of immigration status.

DHS v. Thuraissigiam furthermore lends Respondents' statutory-switch no support. Unlike Petitioner, *Thuraissigiam* was detained while seeking entry into the country, and was never released from custody. *Thuraissigiam* was never re-detained under § 1226(a) because he was placed into expedited removal proceedings, which triggered detention under 8 U.S.C. § 1225(b)(1)(A)(i), a statute not at issue here. *See DHS v. Thuraissigiam*, 591 U.S. 103 (2020). Moreover, *Thuraissigiam* did not challenge his detention. *See id.*

Respondents also cite *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). But that case only supports full process rights for immigrants within the United States interior, like Mr. Diaz-Esquibel. *See Mezei*, 345 U.S. at 212 ("[noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"). And in any event, Mr. Diaz-Esquibel has not been "denied entry," *id.*; he was detained in the interior, *cf. id.* at 216; his release from custody poses no national security concerns such that release would defeat the very objective of Respondents in excluding him. *cf. id.* Petitioner's re-detention violates his Constitutional rights. In reviewing his petition for *habeas corpus*, this Court should thus order Mr. Diaz-Esquibel's immediate release.

IV. Immediate Release is the Only Adequate Remedy to Mr. Diaz-Esquibel's Illegal and Unconstitutional Detention

The great weight of authority in Mr. Diaz-Esquibel's favor only clarifies that he raises substantial claims. Its context—as part of a campaign indiscriminately targeting non-citizens for detention, with the asserted basis shifting over time—is also extraordinary and alarming. *See Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 896 (D. Minn. 2025) (finding extraordinary

circumstances including "shifting post hoc explanations to justify the arrest").

The Court should order Mr. Diaz-Esquibel's immediate release, as it has in analogous cases. *See Chander*, No. 26-cv-21 (RER), ECF Doc. 10 (granting petitioner a writ of *habeas corpus*, and ordering his immediate release); *Arango*, No. 25-CV-6720 (RER), 2025 WL 3637500, at *3 (ordering immediate release as remedy to due process violation); *Crespo Tacuri*, 2026 WL 35569, at *7-8 (same); *Ulloa Montoya*, 2025 WL 3718694, at *6 (same); *Padilla Molina*, 2025 WL 3718728, at *6 (same); *Rodriguez-Acurio*, --- F. Supp. 3d ---, 2025 WL 3314420, at *32 (same); *Artiga*, 2025 WL 2829434, at *9 (same); *Hyppolite*, 2025 WL 2829511, at *16 (same).[6]

V. Petitioner Will Seek Attorney's Fees Under the Equal Access to Justice Act

Respondents remarkably submit a forty-two page Memorandum from *Chander*, a case in which this Court rejected the government's position, and ordered the petitioner's release, granting a writ of *habeas corpus*. Respondents' recycled brief articulates a legal theory that, to date, has been rejected unanimously in the Eastern District of New York, and overwhelmingly in the District of New Jersey, and in the Southern District of New York. Because Respondents' legal position is not "substantially justified," Mr. Diaz-Esquibel will seek EAJA fees should the Court rule in his favor. *See Cornejo Guanuquiza v. Francis*, 25-CV-10267 (RA), 2025 WL 3678121, at *2

[6] Granting the writ of *habeas corpus* is the only proper remedy; merely ordering a bond hearing in immigration court would do nothing to remedy Mr. Diaz-Esquibel's illegal and unconstitutional detention. As courts have acknowledged in ordering immediate release, "[a] bond hearing after the fact, by definition, would not and cannot cure that constitutional violation." *Yao*, 2025 WL 3653433, at *11 (ordering immediate release in almost identical circumstances to Mr. Diaz-Esquibel's) (collecting cases); *Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 8, 2025) (same, and ordering that "shall remain free of detention or any other restraint under the immigration laws of the United States, unless the Government can establish that he violated the conditions of his release outlined in the January 2024 Order of Release on Recognizance"); *Tumba v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014, at *8 (S.D.N.Y. Nov. 4, 2025) ("The Court has determined that the Government violated Petitioner's procedural due process rights under the Constitution, and she is therefore entitled to release.").

(S.D.N.Y. Dec 18, 2025) (awarding EAJA fees in factually similar habeas proceeding; "[t]he Court finds that the Government's position 'was not substantially justified,' since it does not 'and has never had a reasonable basis in statutory text, structure, or history.'"); *Yao v. Almodovar*, No. 25-CV-9982 (PAE), 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) ("Here, Yao is the prevailing party, and ICE's position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified. Yao is thus entitled to reasonable fees and costs."); *Rivera Esperanza v. Francis*, No. 25-CV-8727 (RA), 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 9, 2025) (awarding EAJA fees in factually similar habeas action); *Barco Mercado v. Francis*, --- F. Supp. 3d ---, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) ("[Respondents'] position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.").

CONCLUSION

For the foregoing reasons, Petitioner Elvis Geovanni Diaz-Esquibel respectfully requests that the Court order his immediate, unconditional release from custody (with no ankle bracelet or other electronic monitoring device), and permanently enjoin Respondents from re-detaining him under § 1225.

Respectfully Submitted,

Dated: February 9, 2026
New York, NY

/s/ IH
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