UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Y.S.A. *Petitioner,* v. Kenneth GENALO, *et al.*, *Respondents.*	Civil Action No. 1:26-CV-01557 (AMD)

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Nearly eight months ago, Petitioner, a lawful permanent resident ("LPR") of 20 years, was detained at the airport after returning from a brief vacation with his family. In response to the Petition seeking a Writ of Habeas Corpus, Respondents do not even attempt to argue that they conducted any form of individualized review of whether detention was proper or even authorized under statute. Rather, they designated Petitioner as an "arriving alien" and detained him because of a conviction from over a decade ago that could not even qualify as a basis for detention under binding Second Circuit precedent.

To bypass defending the illegality of Petitioner's initial detention or continued detention under any statute, both of which would compel Petitioner's immediate release, Respondents treat the case as a simple prolonged detention claim. Respondents essentially ask the Court to do no further inquiry into the underlying legality of the detention and instead rely on *Black* to find that Petitioner is entitled only to a bond hearing before an immigration judge. However, this would not cure the violation caused by Petitioner's initial unauthorized detention, nor would it adequately protect his procedural rights in light of his prolonged detention. As such, this Court should find that the bond hearing offered by Respondents is insufficient to cure the egregious statutory and constitutional violations caused by any continued detention of Petitioner and order his immediate release to restore him to the status quo of liberty he enjoyed prior to Respondents unlawful detention.

ARGUMENT

I. Respondents Concede That They Did Not Exercise the Discretion Required to Detain Petitioner

Because Respondents do not address Petitioner's claims that his initial mandatory detention violated his due process rights and the INA, *see* ECF No. 1 ("Pet.") at ¶ 69–83, 133–36, they have effectively conceded that they did not exercise their discretion when subjecting Petitioner, a lawful permanent resident, to mandatory detention without any individualized review. *See, e.g.*, *Munoz Materano v. Arteta*, No. 25-CV-6137 (ER), 2025 WL 2630826, at * 17 (S.D.N.Y. Sept. 12, 2025) ("Respondents do not provide any arguments in opposition . . . and therefore, the Court deems this claim uncontested.").

Nowhere in the record do Respondents contend that they detained Petitioner with any individualized consideration, or that they provided any pre-deprivation notice and hearing. *See* Pet. at ¶ 135. Instead, Respondents deny they had any discretionary authority in the first instance by arguing (incorrectly, as discussed further below) that Petitioner's detention was justified under § 1226(c). *See* ECF No. 7 ("Resp.") at 1. Respondents' rejection of their authority to conduct any form of individualized determination does not magically divest them of their responsibility to do so. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 495 (S.D.N.Y. Aug. 13, 2025) (finding that government's assertion that mandatory detention statute applied was a disclaimer of any discretionary authority, violating petitioner's due process rights); *see also Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025), at *7-8 (noting that government made no individualized determination to justify detaining the petitioner, whether under § 1226(a) or § 1225(b)(2)); Order, *R.C. v. Maldonado*, No. 1:25-CV-06825 (E.D.N.Y. Dec. 19, 2025) (relying on *Ye* to find that whether under § 1225 or § 1226, the government denied

petitioner due process); Order, *Bravo Arizmendi v. Noem*, No. 1:25-CV-07056 (AMD) (E.D.N.Y. Jan. 15, 2026) (same); *J.G.I. v. Genalo*, No. 1:26-CV-00581 (AMD), 2026 WL 323036 (E.D.N.Y. Feb. 6, 2026) (same); *Sumit v. Maldonado*, No. 1:26-CV-00650 (AMD), 2026 WL 371132 (E.D.N.Y. Feb. 10, 2026) (same); *Roganov v. Maldonado*, No. 1:26-CV-01296 (AMD), 2026 WL 686045 (E.D.N.Y. Mar. 11, 2026) (same).

For the reasons discussed in the Petition, Petitioner's due process rights as a lawful permanent resident were violated upon his detention when Respondents subjected him to mandatory detention without conducting any form of an individualized determination or pre-deprivation hearing. *See* Pet. ¶¶ 69-83. This is itself a basis for immediate release because bond hearings are "no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025).

II. Petitioner Cannot be Detained Under Either 8 U.S.C. § 1226(c) or 8 U.S.C. § 1225(b)(2)(A)

Nothing about Respondents' allegation in their response that Petitioner is detained under 8 U.S.C. § 1226(c) cures the violations associated with his initial detention. Section 1226(c), like 1225(b), is a "mandatory" detention statute and Respondents thus disclaim making any individualized considerations of the need for Petitioner's detention prior to his arrest.[1] In addition, however, § 1226(c) cannot apply to Petitioner at all, for largely the same reasons that

[1] Respondents apparently concede that Petitioner cannot be detained under 8 U.S.C. § 1225(b)(2), as their letter brief does not cite to 8 U.S.C. § 1225 at any point. *See* ECF No. 7 ("Resp.").

§ 1225(b)(2) cannot. This is because Petitioner has not committed a crime involving moral turpitude ("CIMT") and, even if he had, only one CIMT does not subject him to § 1226(c) unless he is inadmissible, which he is not.

First, in order to be properly subject to detention under § 1225(b)(2) or § 1226(c), Petitioner would have to have committed a CIMT. *Compare* 8 U.S.C. § 1226(c)(1)(A) (which covers individuals who are inadmissible for having committed an offense listed under 8 U.S.C. § 1182(a)(2), which includes a CIMT), *with* 8 U.S.C. § 1225(b)(2) (which covers individuals who are "seeking admission," which can include lawful permanent residents who have committed an offense identified in 8 U.S.C. § 1182(a)(2), as discussed at Pet. ¶¶ 46 & 70).[2] Respondents deem it "uncontested" that Petitioner has committed such an offense, Resp. at 3, but nothing could be farther from the truth. His Petition clearly explains why his sole theft conviction from over a decade ago cannot be considered a CIMT under binding Second Circuit law, and thus why he cannot be detained under § 1225(b)(2). *See* Pet. at ¶ 80.[3]

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[2] Respondents are not specific about which subcategory of section 1226(c)(1) they believe applies to Petitioner, *see* Resp. at 2–3, but none of the remaining provisions can possibly be applied to his case.

[3] As explained in the Petition, Petitioner's conviction would only constitute a CIMT under BIA precedent that postdates his conviction. *See Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016); Pet. at ¶ 80. Because the Second Circuit has held that that precedent may not be applied retroactively, his conviction must be evaluated under the preexisting standard. *See Obeya v. Sessions*, 884 F.3d 442, 449 (2d Cir. 2018); Pet. at ¶ 80. Under the *Obeya* test, Petitioner's conviction is not a CIMT because it does not require intent to permanently deprive. *See Obeya*, 884 F.3d at 449; *Almanzar v. Att'y Gen. United States*, No. 21-3092, 2023 WL 11833060, at *3 (3d Cir. 2024) (finding New Jersey theft conviction does not qualify as a crime involving moral turpitude under the old test); Pet. at ¶ 80. As a result, it is clear that his conviction cannot be considered a crime involving moral turpitude under 8 U.S.C. § 1182(a)(2).

Second, Petitioner must also be "inadmissible" to be subject to mandatory detention under Section 1226(c) on account of one CIMT. *See* 8 U.S.C. § 1226(c)(1)(A).[4] However, in order to be "inadmissible," one must be "seeking admission." *See* 8 U.S.C. § 1182(a); *Lau v. Bondi*, 130 F.4th 42, 46 (2d Cir. 2025). As Petitioner has explained and Respondents do not rebut, Petitioner cannot be treated as seeking admission, a prerequisite to being inadmissible, consistent with due process and the INA. *See* Pet. at ¶ 78–83.

Independently, the Supreme Court has held that § 1226 only applies to noncitizens already in the country. In *Jennings v. Rodriguez*, the Court explained that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." 583 U.S. 281, 289 (2018) (emphasis added) (quoted in *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *5 (E.D.N.Y. Dec. 8, 2025)); *see also* ECF No. 1 ("Pet.") at ¶ 48. Petitioner was not "already in the country" when detained, he was returning from a trip abroad. *See id.* at ¶ 26. As a result, the Supreme Court has made clear that Petitioner cannot be subject to § 1226.

As a result, Petitioner cannot be detained under either Sections 1225(b)(2) or 1226(c). This is consistent with the statutory scheme. Because of the manifest unfairness that results in cases like this one, where Petitioner has been detained for going on vacation, Congress did not intend for returning permanent residents to be detained as seeking admission at all, unless they met certain stringent requirements. Thus, if a returning permanent resident does not meet the

[4] A lawful permanent resident who is deportable is not subject to mandatory detention under Section 1226(c) unless they have been convicted of two CIMTs, or one CIMT within the first five years of admission, which is not at issue in this case. *See* 8 U.S.C. § 1226(c)(1)(B).

narrow exceptions required to be detained under § 1225, it would likewise make no sense for them to be detainable under § 1226(c).

Further, any such interpretation of the INA would violate the due process rights that flow from Petitioner's permanent residence. *See* Pet. at ¶ 82–83. For Constitutional purposes, returning permanent residents must have their status assimilated as if they had never left the country. *See Landon v. Plasencia*, 459 U.S. 21, 33 (1982) ("For purposes of his constitutional right to due process, we assimilate petitioner's status to that of an alien continuously residing *and physically present in* the United States.") (quoting *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953)) (emphasis added).[5] Treating Respondent as seeking admission is inconsistent with the heightened due process protections to which he is entitled and puts him on the same footing as a noncitizen entering the country for the first time. This runs counter to the clear thrust of Supreme Court caselaw.

Accordingly, Petitioner's detention under either statute has been unlawful since its inception. This "renders any post-deprivation review by an immigration judge inadequate" to cure his past seven months of illegal detention. *Ye v. Maldonado*, 2025 WL 3521298, at *9. Therefore, the only remedy which can restore Petitioner to the *status quo ex ante* is "the typical remedy for unlawful executive detention [which] is of course, release." *Id.* (quoting *Munaf v. Green*, 553 U.S. 674, 693 (2008)) (cleaned up).

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[5] Respondents do not dispute that Petitioner is entitled to heightened due process protections as a returning LPR.

III. Even if Petitioner's Detention is Authorized by Statute, It Violates Substantive Due Process

Even if the Court finds that Petitioner was initially detained in conformance with the statutory and constitutional requirements, Petitioner's ongoing detention violates his substantive due process rights. Respondents have not claimed that Petitioner's detention is in furtherance of any constitutionally valid purpose. *See generally* Resp. They do not contend that he is a flight risk or danger to the community. *Id.* And they do not dispute the inhumane, punitive conditions at MDC that courts of this circuit have determined warrant release for those who do not pose a flight risk or a danger. Pet. at ¶ 91. Instead, Respondents circumvent the fact that Petitioner cannot be detained at all if it is not narrowly tailored in furtherance of a constitutionally valid purpose by steering the Court toward a bond hearing that would not cure the underlying violation caused by any continued detention. *See* Pet. at ¶¶ 84-92. This violation alone requires release. *See also Dudamel v. Jamison*, 2026 WL 498612 (E.D. Pa., Feb. 23, 2026) (finding immediate release necessary where detention served no proper governmental purpose).

IV. A Bond Hearing in Immigration Court Would be Inadequate to Protect Petitioner's Due Process Rights

Even if the Court agrees that a bond hearing is the proper remedy in this case, the Court should follow the lead of other courts in this circuit and conduct such a hearing itself to ensure that any grant of relief is effective. *See* Pet. at ¶ 131. Because of what appear to be nationwide policy changes by the agency, bond hearings before immigration judges have routinely resulted in continued detention and well-documented due process violations, which have required ongoing litigation through motions to enforce in district courts. *See, e.g.*, Pet. at ¶¶ 128-130; *Juan T.R. v. Noem*, No. 26-CV-0107 (PJS/DLM), 2026 WL 555601, at *1 (D. Minn. Feb. 26,

2026) (habeas court attaching appendices cataloging 210 court orders the Department of Justice had violated in 143 habeas cases, which included over 15 instances of failing to provide a court ordered bond hearing); Emergency Amended Motion to Enforce, *Romero Perez v. Francis*, No. 25-CV-8112-JGK, ECF No. 33 at 5 (S.D.N.Y. Nov, 13, 2025) (after order finding Petitioner detained under § 1226(a), IJ disobeyed court order and denied bond under § 1225(b), then, after a second bond hearing to remedy the first deficiency, DHS invoked an automatic stay of the bond grant); *J.M.P. v. Arteta*, No. 25 CIV. 4987 (DEH), 2025 WL 2984913, at *14 fn.20, 21 (S.D.N.Y. Oct. 23, 2025) (collecting thirty-two cases in the last three months where DHS invoked the automatic stay to prevent release on bond); *Kumar v. Soto*, No. 26-cv-777, Dkt. No. 21. (D.N.J. Feb. 13, 2026) (filing from the New Jersey U.S. Attorney's Office admitting to violating 56 orders in habeas cases, including holding bond hearings in the required time period, and failing to file 16 required status updates); *Fernandez Alvarez v. Noem*, No. 2:26-CV-00313-SPC-DNF, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026) (ordering immediate release after immigration judge found petitioner was detained under 8 U.S.C. 1225(b)(2) and ineligible for bond even after habeas court had explicitly ordered otherwise); *Cartagena Hueso v. Soto*, No. 26-cv-1455 (ZNQ), 2026 WL 539271, at *3 (D.N.J. Feb. 26, 2026) (granting immediate release after Respondents failed to comply with two court orders to hold a bond hearing within 10 days and to prevent petitioner's transfer out of state).

Respondents assert that *Black* does not stand for the proposition that a bond hearing may be conducted by this Court. Resp. at 5. However, they cite nothing to contradict the well-established authority of district courts to conduct bond or bail hearings in habeas proceedings. *See* Pet. ¶ 131; *see also Centeno-Martinez v. Jamison*, No. CV 25-3593, 2025 WL 3157711 (E.D. Pa. Nov. 12, 2025) (ordering hearing conducted by district court); *Chiguano v. Lowe*, No. 1:24-

CV-02210, 2025 WL 3187161 (M.D. Pa. Nov. 14, 2025) (same); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 474 (D. Mass. 2010) (discussing habeas judge's equitable power, including power to hold a bail hearing); *Ramirez v. Watkins*, No. 10-126, 2010 WL 6269226, at *17-19 (S.D. Tex. Nov. 3, 2010) (same). Therefore, this Court, having all the necessary information and being familiar with the facts of the case, should conduct any bond hearing to conserve judicial resources and ensure Petitioner's rights are not violated any further.

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's immediate release, or in the alternative, conduct a bond hearing before this Court in which the government bears the burden of proof to justify Petitioner's ongoing detention by clear and convincing evidence, and at which alternatives to detention and ability to pay must be considered.

Respectfully Submitted,

Dated: March 23, 2026
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 2,592 words.