UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of:	)	
JN FENEL AUGUSTE	)	CASE NO. 3:26CV0971
Petitioner,	)	
v.	)	JUDGE BENITA Y. PEARSON
ATTORNEY GENERAL OF THE UNITED STATES, *et al.*,	)	REPLY TO RESPONDENT'S RESPONSE
Respondents.	)	

I. Introduction

To conserve judicial economy and resources, Petitioner submits this abbreviated brief, as have the Respondent. Counsel for Petitioner will attempt to separate the wheat from the chaff of Respondent's Response to show why this Honorable Court should grant this Petition.

II. Petitioner has a liberty interest to be free from detention

Petitioner JN Fenel Auguste has a liberty interest to be free from detention, even as an immigrant. "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). "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

III. The Respondents' application of 8 U.S.C. § 1225(b)(1) is faulty.

The first issue in this case relates to whether mandatory detention without the ability to have a bond determination applies to Petitioner when he has been detained within the interior of

the United States once he has "passed through the gates" of our country. Respondents contend Petitioner is being detained under 8 U.S.C. § 1225(b)(1).

8 U.S.C. § 1225(b)(1) states:

(b) Inspection of applicants for admission
(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.
(A) Screening
(i) In general
If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.
(ii) Claims for asylum
If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

However the Respondents have not followed the prescriptions of 8 U.S.C. § 1225(b)(1) by having him be interviewed by a immigration officer,[1] because he is not now seeking admission. The statute 8 U.S.C. §1225(b)(1) and (b)(2) authorizes the government to detain certain aliens *seeking admission*. The Sixth Circuit in *Lopez-Campos Nos. 25-1965/1969/1978/1982, 2026 WL 1283891 (6th Cir. May 11, 2026),* goes at length to discuss statutory construction and congressional intent to distinguish between *seeking admission* and *an applicant for admission.*, 2026 WL 1283891 at 4-11.

[1] This statute has never been properly engaged. He has not been interviewed or screened by immigration officers since his detention. As the Sixth Circuit in *Lopez-Campos* said, an Immigration Judge is not is not an inspecting officer. *2026 WL 1283891* at 9. Petitioner is being held on an *ad hoc* 'shoot from the hip' classification.

IV. The Petitioner is an *applicant for admission* not *seeking admission*

Respondents, in their brief conflate the idea of *applicant for admission* with of *seeking admission*. While the Sixth Circuit *in Lopez-Campos,* does not directly address the exact issues related to Petitioner,[2] it does not prohibit this Honorable from granting the petition. Indeed, the rationale and reasoning in *Lopez Campos* gives a clear path, along with the cases it cites, away from the draconian result the Respondents suggest.

Moreover, Petitioner's circumstance is entirely different than a person initially "seeking admission." Petitioner presented himself at a port of entry a year prior to his detention. At that time, he was granted humanitarian parole and moved to Ohio, well within the interior of United States, where he established substantial roots. He lived and worked in Columbus, paying taxes, and marrying Kwelin Auguste (nee Blow) a United States Citizen.[3] Mrs. Auguste filed an I-130 Petition so that he could adjust status and then a I-485 petition to adjust status.[4]In *Lopez Campos* the Sixth Circuit clearly articulated those "having passed through our gates," are entitled to traditional standards of fairness with due process of law. , *2026 WL 1283891* at 11-12. Petitioner was arrested at the courthouse in Cleveland, Ohio a year after his entry, about 1640 miles from Brownsville, Texas. [5]

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[2] A person who was inspected and paroled *vis a vis* someone who entered the Untied States without inspection.

[3] Kwelin and Petitioner were newlyweds. She has stuck with him throughout this entire process. They are not nameless faceless people, as the *Lopez Campos* court recognized in its decision regard those petitioners.

[4] He filed an I-485 petition to adjust status but cannot complete the process while detained. USCIS will not set up a medical exam nor get him fingerprinted as per their requirements.

[5] While this Honorable Court has jurisdiction to adjudicate his detention an, the facts of when, where, and how he was detained are relevant.

V. Second Circuit Decisions: rejection of parolees as arriving aliens

Additionally, within the Federal Court of Appeals for the Second Circuit, a Circuit Court cited by the Sixth Circuit in its *Lopez Campos* decision, several districts have rejected the idea that parolees with expired or terminated parole should be considered perpetual arriving aliens. These District courts have followed the Supreme Court prescription in *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 144 S.Ct. 2244 219 L.Ed.2d 83 (2024) to "use every tool at their disposal to determine the best reading of the statute," 603 U.S. at 400, 144 S.Ct. 2244 at 2266.

In *Ruiz v. Trump*, 2026 WL 323254 (D. Vt. Feb. 6, 2026), rejected the proposition that parolees who have resided in the United States for years are perpetually considered "arriving aliens" due to their status as parolees. Other district courts in the Second Circuit have reached a similar conclusion, finding that, as a matter of statutory interpretation, a noncitizen who has been residing in the United States after the expiration or termination of parole does not have his or her status revert to one of an "arriving alien." *Covelli-Chaparro v. Bondi*, --- F. Supp. 3d ----, 2026 WL 118842, at *6 (E.D.N.Y. Jan. 15, 2026) (finding that petitioner, residing in the interior of the country since May of 2022, was not subject to mandatory detention pending expedited removal as an "arriving alien.") *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ----, 2025 WL 3314420, 811 F.Supp.3d 274 (E.D.N.Y. Nov. 28, 2025) (finding it that a Petitioner is still in the process of 'arriving' in the United States when she has been continuously residing in the United States for more than three years after the expiration of her humanitarian parole); *Qasemi v. Francis*, 2025 WL 3654098, (S.D.N.Y. Dec. 17, 2025) (the court applied the plain meaning of "arriving in the United States" and upon his parole into the interior of the country, had arrived in the United States and was no longer a noncitizen arriving in the United States. *Rodriguez v. Rokosky*, 2025

WL 3485628 (D.N.J. Dec. 3, 2025) (the statutory text does not support a reading returning the Petitioner to his pre-parole status).

Additionally, the Federal District Court for the District of Columbia in *Coalition for Humane Immigrant Rights v. Noem* 805 F. Supp. 3d 48, 91 (D.D.C. 2025), the District Court for the District of Columbia addressed whether parolees were "arriving aliens" subject to expedited removal under § 1225(b)(1) following expiration of their parole. The plaintiffs argued that the present-progressive tense § 1225(b)(1) "signals an action that is temporary but currently occurring" and, thus, "[o]nce inspected at the border and paroled into the country,... a noncitizen is no longer in the process of 'arriving.' " *Id.* at 89 (internal quotation marks omitted). The *Coalition for HIR* court found that the "[p]laintiffs' interpretation is the best reading of the statute, despite DHS's longstanding regulation to the contrary." *Id.* at 90 (citing *Loper Bright*, 603 U.S. at 394, 144 S.Ct. 2244 92024)). In so deciding, the court explained:

> "Arrive" means "to reach a destination" or "to make an appearance." Read according to its plain meaning, a noncitizen "arriving" in the United States would be one who is in the process of reaching his or her destination (the United States) and making an appearance here. It would not naturally be read to refer to someone who previously reached the United States via a port of entry, underwent inspection at that port of entry, and then was paroled into the United States (beyond their original destination) for an indefinite period of time. 805 F. Supp. 3d 48 at 90.

VI. Southern District of Ohio: use of the *Mathews v. Eldridge* test

Within our Sixth Circuit, this Honorable Court's sister Court decided the case of *Azalyar v. Raycraft*, 814 F.Supp.3d 926 (S.D. 2026) in favor of a Petitioner parolee similarly situated to Petitioner in the case at bar. The *Azalyar* case involved an Afghan parolee who was re-detained after his parole expired. The Federal District Court for the Southern District of Ohio applied the three part balancing test in *Mathews v. Eldridge* 424 U.S. 319 96 S.Ct. 893 47 L.Ed.2d 18

(1976) to determine whether a civil detention violated the Petitioner's rights in that case. The court balanced the following factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 814 F.Supp.3d at 933.

After balancing the factors, The Southern District of Ohio decided the noncitizen's ongoing immigration detention without opportunity for bond, pursuant to INA provision mandating detention of "applicant for admission" who was "seeking admission" but "not clearly and beyond a doubt entitled to be admitted," created high risk of erroneous deprivation of his liberty interest in physical freedom, weighing in favor of finding that detention violated due process under *Mathews v. Eldridge* test. The court reasoned the noncitizen had previously been paroled and government had determined he did not pose risk of flight or danger, government did not communicate any basis for noncitizen's re-detention on either of such grounds. The Federal Court for the Southern District of Ohio found a bond hearing was adequate to protect the government's interests. *Azalyar v. Raycraft*, 814 F.Supp.3d at 935. Additionally, the Southern District said the government's "argument suffers from serious deficiencies, the most critical of which is a failure to substantively address the crux of Azalyar's actual petition—that his detention violates the Fifth Amendment's guarantee that no person shall be deprived of liberty without due process of law." 814 F.Supp.3d at 932.

VII. The Interests of the Parties in Balance weigh in favor of Petitioner

Petitioner JN Fenel Auguste's interests in this case are substantial. He stands to lose the right to stay in the United States, he cannot proceed on his immigration applications while detained, he is denied the right to rejoin his wife, the core member of his family, which is high among the interests of any individual. See, e.g., *Moore v. City of East Cleveland*, 431 U.S. 494, 499, 503-504, 97 S.Ct. 1932, 1935, 1937-1938, 52 L.Ed.2d 531 (1977) (plurality opinion).

Petitioner concedes the government has an interest in the effective administration of justice at the border, however, in this case, to re-detain a person who has a pathway to legal status, who was already determined not to be a threat to the United States and is not likely to flee, cannot outweigh substantial individual liberty interests involved. The government's interest could still be protected by a bond hearing. In evaluating the procedures in any case, the courts must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures. *Mathews v. Eldridge*, 424 U.S. 319, 334-335, 96 S.Ct. 893, 902-903, 47 L.Ed.2d 18 (1976).

VIII. Conclusion

Congress has granted federal district courts, 'within their respective jurisdictions,' the authority to hear applications for habeas corpus by any person who claims to be held 'in custody in violation of the Constitution or laws or treaties of the United States.' " *Rasul v. Bush*, 542 U.S. 466, 473, 124 S.Ct. 2686, 159 L.Ed.2d 548 (2004) (quoting 28 U.S.C. §§ 2241(a), (c)(3)). The role of this Court is to determine whether the procedures so far in this case comport with due

process and fairness. Here they clearly do not. Further, it would be hard to contend that the *Lopez Campos* decision stands for the proposition that a person who came without inspection has access to greater process for liberty than someone who followed the rules and received humanitarian parole. Petitioner does not begrudge those who directly benefit under *Lopez Campos*, he simply wants an equal opportunity at liberty. The decisions this court in *Echavarria Morales v. Noem* and *Lopez v. Raycraft*, while not on directly on point, are consistent with granting Habeas Relief in this case.

Respectfully Submitted,

/s/ Frank Krajenke

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