UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAIME DAVID CAMARGO ECHEA

Petitioner,

v.

TODD BLANCHE, Acting Attorney General of the United States; KENNETH GENALO, Director, New York Field Office, ICE Enforcement and Removal Operations Division; MARKWAYNE MULLIN, Secretary of Homeland Security; DAREN K. MARGOLIN, Director, Executive Office for Immigration Review; RAUL MALDONADO JR., Warden, Metropolitan Detention Center; and TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

26-cv-2527 (BMC)

Petitioner Jaime David Camargo Echea, through counsel, submits this reply brief in support of his petition for habeas corpus.

BACKGROUND

There is no dispute that Mr. Camargo is entitled to due process, and that the particular process due to him must derive from the statute governing his detention. The question is – which statute? The government now argues it is 8 U.S.C. § 1225(b)(1)(B)(ii), providing for mandatory detention. But it is mistaken. The government's own notice to Mr. Camargo at the time of his release specified that he was released under authority of § 1226(a) – an election which cannot be altered *post hoc*. This alone warrants granting the petition. But even if the government had not

granted discretionary release, the Second Circuit's recent opinion in *Cunha v. Freden*[1] unequivocally clarifies that the detention here falls under § 1226(a) by default, not under § 1225.

It is also undisputed that the government has conducted no individualized inquiry into Mr. Camargo's case since his release in 2022. Yet they have imprisoned him – a man who has never been convicted or accused of a crime – in what a judge in this District recently described as being, even before an influx of immigrant detainees, "an already-overcrowded jail that houses persons accused (and in some cases, convicted) of some of the most serious and violent crimes that exist under federal law."[2] Due process obligates this Court to grant the petition and immediately release him from custody without conditions.

DISCUSSION

I. Mr. Camargo is entitled to unconditional release because his detention is under INA § 1226(a), he has received no individualized assessment, and the government cannot change its justification post hoc

The government has suddenly chosen to argue for the first time that Mr. Camargo was released subject to § 1225(b)(1)(B)(ii) of the Immigration and Naturalization Act (INA). Respondents' Return Br. (Ret. Br.) (ECF No. 8), at 1-2. In fact, according to the government's contemporaneous written notice to Mr. Camargo, he was released from custody by DHS

[1] --- F.4th ----, 2026 WL 1146044 (2d Cir. Apr. 28, 2026).
[2] *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 478 (E.D.N.Y. 2025).

expressly "[p]ursuant to the authority contained in § 236 of the Immigration and Nationality Act"[3] – that is, 8 U.S.C. § 1226.[4]

"The Notice of Custody Determination (Form I-286) memorializes DHS's *initial* custody decision for a noncitizen taken into immigration custody under 8 U.S.C. § 1226." *Aroca v. Mason*, --- F.Supp.3d ----, 2026 WL 357872, at *3 (S.D.W.Va. Feb. 9, 2026) (emphasis added). As another court in this District has held, that initial decision controls, *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *5 (E.D.N.Y. Dec. 8, 2025) (Granting habeas to an immigrant who "illegally crossed the international border without being inspected by an immigration officer at a designated port of entry," was briefly detained and then released by immigration officials, and later applied for asylum, where "the government's own records establish[ed] that it was acting under Section 1226" when it released him.), thus on its own it entitles Mr. Camargo to release as a matter of due process. *See also, e.g.*, *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 67 (D.N.H. 2025) (granting habeas petition where, inter alia, the petitioner's "initial release from DHS's confinement … was pursuant to an 'Order of Release on Recognizance' stating that Jimenez was being released under § 1226.").

Another court has reached the same conclusion where, as here, parole was granted *after* petitioner's discretionary release under § 1226(a). *See Salas v. Soto*, No. CV 25-17339 (MAS), 2026 WL 485712, at *1 (D.N.J. Feb. 21, 2026) (Granting habeas petition where "[p]etitioner was

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[3] DHS "Notice of Custody Determination" Form I-286, executed October 4, 2022 (attached with accompanying documents as **Exhibit A** hereto); *see id.* at unnumbered 7 ("Pursuant to the authority contained in *Section 236* of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, *pending a final administrative determination in your case*, you will be … [r]eleased ….") (emphasis added).

[4] This can refer only to § 1226*(a)* – the sole subsection in Section 1226 authorizing release from detention.

'released' by border officials pursuant to 'the authority contained in [8 U.S.C. § 1226] and part 236 of title 8, Code of Federal Regulations'" and only *later* "provided … with documents that indicated that the Government had granted him humanitarian parole into the United States …."), *id.* at *3 ("[W]hile 8 U.S.C. § 1182(d)(5)(A) does require that, upon the termination of his parole, Petitioner be returned 'to the custody from which he was paroled,' *Petitioner was not in mandatory detention at the time of his parole*. Instead, he was released pursuant to 8 U.S.C. § 1226(a).") (internal citations omitted; emphasis added); *see also Ajay v. Maldonado*, No. 26-CV-0676 (BMC), 2026 WL 1045420, at *2 (E.D.N.Y. Apr. 17, 2026) ("[T]he statute's reference to 'return[ing the parolee] to the custody from which he was paroled' requires us to look back to why petitioner was detained in the first place ….").

Still another court in this District recently granted a habeas petition where the detainee, like Mr. Camargo, had been expressly released under § 1226 and had an asylum application pending at the time of the petition. *See El Moctar v. Francis*, No. 26-CV-02453 (OEM), 2026 WL 1170755, at *2 (E.D.N.Y. Apr. 29, 2026) ("Petitioner received an NTA pursuant to INA Section 236, and his removal proceedings remain pending. Accordingly, for reasons consistent with the reasoning of the Second Circuit [in *Cunha v. Freden*], the Court finds that mandatory detention under § 1225 is inapplicable to Petitioner and that discretionary detention under § 1226 governs Petitioner's detention.") (internal citations omitted); *see also Ye*, 2025 WL 3521298, at *6 ("Section 1225 does not apply to a noncitizen like the petitioner, who has been living in the United States while his asylum application is pending, and … his detention can only be authorized if ICE complied with 8 U.S.C. § 1226(a)."

All of these authorities establish that Mr. Camargo's release from detention was discretionary, not the result of humanitarian parole. Because of this, and because it is undisputed

that Mr. Camargo has received no individualized assessment as to whether he may be a flight risk or a danger to the community since he was re-detained in February as due process requires, he is entitled to unconditional release.

The government may argue that it has changed the legal basis for his imprisonment. Indeed, this is not the first time since the Second Circuit issued its opinion in *Cunha v. Freden* just three weeks ago that the government has done flip-flops in this District in search of an acceptable *post hoc* rationale for immigration detention not based on § 1225(b)(2). *See Carbajal v. Frazier*, No. 26-CV-2778-SJB, 2026 WL 1309265, at *1 (E.D.N.Y. May 12, 2026) ("Instead of recognizing the illegal detention, Respondents have switched positions."). But as the *Carbajal* court showed, courts at every level have held that due process itself forbids such a change:

> "The Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). And due process does not tolerate the revisionist fiction Respondents have created ....
>
> An executive agency, like ICE, is bound by the bases it used to justify its decision—here the arrest and detention—*in the first instance*, not reasons it comes up with afterwards. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21, 24 (2020) ("The basic rule here is clear: an agency must defend its actions based on the reasons it gave when it acted," and a decision will not be upheld based on "impermissible *post hoc* rationalization."; *Lincoln v. Turner*, 874 F.3d 833, 842 (5th Cir. 2017) ("Post-hoc justifications based on facts later learned cannot support an earlier arrest."); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 312 (E.D.N.Y. 2025) ("Once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant.")), *appeal dismissed*, No. 26-0219, 2026 WL 1208948 (2d Cir. Feb. 25, 2026); *Singh v. Blanche*, No. 26-CV-2538, 2026 WL 1239057, at *4 (E.D.N.Y. May 6, 2026) ("ICE's detention of Mr. Singh from February 2, 2026 through April 30, 2026 was *unlawful from its inception*, notwithstanding Respondents' efforts at post-hoc rationalization based on its expansive interpretation of Section 1225(b)(2).")

Id., at *1 (citation modified; first emphasis in original, second emphasis added). *See also Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 539 (1981) ("[T]he *post hoc* rationalizations of the agency ... cannot serve as a sufficient predicate for agency action."). DHS justified its

release of Mr. Camargo in the first instance under § 1226(a), and the discretionary release available under that subsection determines the due process to which he is entitled, notwithstanding the government's newly-adopted embrace of § 1225(b)(1)(B)(ii).

Finally, the government's attempt to distinguish the many "[o]ther recent decisions in this District ordering Section 1226(a) process … because the alien had been released under Section 1226 …, not on humanitarian parole under Section 1182(d)(5)(A)," Ret. Br. at 15, n.3, falls flat here precisely because Mr. Camargo's release *was* initially – and irreversibly – under § 1226(a).

II. Even if Mr. Camargo had not been explicitly released under § 1226, *Cunha v. Freden* makes it applicable by default here, compelling his release

In a cursory paragraph, the government waves aside the Second Circuit's recent, carefully-reasoned 82-page opinion in *Cunha v. Freden*, --- F.4th ----, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026). Ret. Br. at 15-16. But *Cunha* would control this case even if the government had not initially released Mr. Camargo under § 1226(a).

Relying on "the plain text" of §§ 1225 and 1226, "the Supreme Court's established understanding of" both sections, the statute's context, structure, history, and purpose, and thirty years of executive practice and legislative silence, *Cunha* holds that "Section 1226(a) sets forth the default rule for discretionary detention of noncitizens, which Sections 1225(b) and 1226(c) modify for certain subsets of high-risk noncitizens." *Id.* at 2.

The government repeatedly adverts to the Supreme Court's opinion in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *e.g.*, Ret. Br. at 11-12, to support its argument that mandatory detention under § 1225(b)(1)(B)(ii) supplies the relevant rule here. But *Cunha* underlines that the government's reading of *Jennings* on this point is wrong:

> Although the government suggests that there is also language in *Jennings* that supports its reading—because the Court noted that Section 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *id.* at 287—we are unpersuaded. Indeed, the Court left no doubt as to its view regarding the differences between Sections 1225 and 1226, which squarely fits with Petitioner's interpretation, because it repeated later in the opinion that *Section 1226 "applies to aliens already present in the United States." Id.* at 303. Thus, as the Court explained, Section 1226 "creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings" and "permits the Attorney General to release those aliens on bond, except as provided in subsection (c)." *Id.*

Cunha, --- F.4th ----, 2026 WL 1146044, at *14 (citation modified; emphasis added). Thus, although *Cunha* concerned a noncitizen who entered the country without inspection and admission and whether his detention was mandatory under § 1225(b)(2) or discretionary under § 1226(a), its logic applies in full to the question here whether *§ 1225(b)(1)(B)(ii)* or § 1226(a) apply. *Cunha* distills the law underlining the difference for purposes of due process between those entering the country, and those like Mr. Camargo who have already entered:

> Under settled Supreme Court precedent, "aliens 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." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S.Ct. 625, 97 L.Ed. 956 (1953) (emphasis added). That is, "once an alien enters the country, the legal circumstance changes, ... whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). The government's reading [that the "entry fiction" permits a noncitizen long in the country to be held under § 1225(b)] runs afoul of these fundamental principles.

Id., at *15. Yet the government here would have this Court apply the "entry fiction" to a noncitizen who spent three and a half years living in this country, treating him as if still at the

border, not entitled to traditional standards of fairness applied to his current detention. Ret. Br. at 21, n.6. *Mezei*, *Zadvydas*, and *Cunha* itself dictate that he is entitled to more.

In short, under *Cunha* and the precedents on which it relies, § 1226 applies to noncitizens already in the United States, and it therefore applies to Mr. Camargo. For similar reasons, *Ajay v. Maldonado* is inapplicable here. No. 26-CV-0676 (BMC), 2026 WL 1045420, at *2 (E.D.N.Y. Apr. 17, 2026). *Cunha* binds this court and, at minimum, calls into question the precise holding in *Ajay*. But even if it did not, *Ajay* is distinguishable. The petitioner in *Ajay* admitted that his initial detention was authorized under § 1225. *Ajay*, 2026 WL 1045420, at *2. Here, the government's own documents show Camargo's release was expressly and contemporaneously authorized under § 1226, and, as shown above, although the government now purports to change that election, it cannot escape its initial choice. The decision in *Lin v. Almodovar*, cited by the government, Ret. Br. at 2, decided like *Ajay* before *Cunha*, even if it bound this Court (it does not), fares no better for the same reasons. No. 1:25-CV-9639-MKV, 2025 WL 3706626 (S.D.N.Y. Dec. 22, 2025); *see id.* at *5 ("Petitioner *explicitly concedes* he is currently subject to mandatory detention under Section 1225(b)(1)(B)(ii).") (emphasis added).

CONCLUSION

For all of the reasons stated above, the government's arguments fail to show that Mr. Camargo's detention satisfies the due process to which he is entitled. Accordingly, the petition should be granted, and he should be freed from detention immediately, and without conditions.

Respectfully Submitted,

Dated: May 18, 2026
Chappaqua, NY

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LOCAL CIVIL RULE 7.1(c) CERTIFICATE

I, Donald R. Gordon, an attorney duly admitted to practice before this Court, hereby certify, pursuant to Local Civil Rule 7.1(c) of the Local Rules of the United States District Court for the Eastern District of New York, that the foregoing Petition complies with the applicable word-count limitation set forth in that Rule, and exclusive of caption, table of contents, table of authorities, signature block, and this Certificate, contains **2,553** words, including footnotes and endnotes, as counted by the word-processing system used to prepare the Petition.

Dated: May 18, 2026
Chappaqua, NY

/s/ Donald R. Gordon
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