UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

KARY MIRIOSY DIAZ MARTINEZ, Petitioner,	)	
v.	)	**Civil Action No. 1:25-cv-11613-BEM**
PATRICIA HYDE, Field Office Director, U.S. Immigration and Customs Enforcement, Boston Field Office; MICHAEL KROL, HSI New EnglandSpecial Agent in Charge; TODD LYONS, Acting Director, U.S. Immigrations and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security, Respondents.	)	

Petitioner's Response to the Respondents' Motion to Reconsider

The Petitioner hereby submits her response to the Respondents' Motion to Reconsider in the instant case. For the reasons herein, Petitioner objects to reconsideration of the Court's decision.

Background

Kary Miriosy Diaz Martinez ("Ms. Diaz Martinez") is a 29-year-old woman born in the Dominican Republic. She fled the Dominican Republic to escape unrelenting physical and sexual abuse from the father of her children, who beat her, controlled her, sexually abused her and threatened her with death for years. Ms. Diaz Martinez came to the United States to marry her long-distance partner of four years and build a new life for herself and her two minor children.

In April 2024, Ms. Diaz Martinez entered the United States without inspection. She was briefly apprehended at the U.S.-Mexico border and released on her own recognizance to attend her immigration court hearing in Boston. She is currently married to a United States citizen and

is the mother of two young children, ages 7 and 10. Ms. Diaz Martinez has no criminal history in the United States, or anywhere in the world. On June 3, 2025, she appeared before the immigration court for her scheduled master calendar hearing. The Department of Homeland Security ("DHS") moved to dismiss her case and she objected, preferring instead to continue her case in court. The Immigration Judge agreed and granted her a continuance on her case until May 19, 2026. Shortly after exiting the courtroom, Ms. Diaz Martinez was nonetheless arrested by Immigration and Customs Enforcement ("ICE") as she attempted to board the elevator and leave the court. During her arrest, Ms. Diaz Martinez experienced a medical episode, collapsing into the arms of her husband, unable to walk or speak. She was sobbing and shaking uncontrollably. She was taken to Massachusetts General Hospital by ICE for treatment, though she is unaware of what medication she was provided and counsel's attempts to secure her medical records have been unsuccessful.

Ms. Diaz Martinez has no criminal history and is not a flight risk. She has a stable home to live in with her U.S. citizen spouse and step-daughter in Rhode Island. She intends to apply for adjustment of status through her U.S. citizen spouse and, in the alternative, asylum, withholding of removal and relief under the Convention Against Torture because of the persecution she faced, and will continue to face, if removed to the Dominican Republic.

Ms. Diaz Martinez was detained at the Burlington Field Office ("Burlington") for more than one week, from June 3, 2025 until June 12, 2025. In Burlington, Ms. Diaz Martinez was subjected to abhorrent, inhumane conditions. She slept on the cold, hard floor, with only a thin mylar blanket. She was given little to eat. Within the first eighteen hours of her detention, she was provided only one apple and a small amount of oatmeal. She described the food as "almost raw" and "like cat food." In Burlington, she had no access to soap, a shower or any way to bathe.

She shared a small holding cell with between eight and seventeen other women. There was no privacy to use the bathroom, which was a single toilet in the cell, shared by all the women. She had no access to her anxiety or depression medication, or a physician or medical care, despite the medical episode that occurred at the time of her arrest. She was not offered the opportunity to see a doctor during her nine days in Burlington. She reports that her hair fell out from stress and malnutrition. She was deeply depressed and spent most of the day distraught and tearful. While in Burlington, her access to counsel was severely restricted. During her time in detention, Ms. Diaz Martinez lost approximately ten pounds because her mental health sharply declined and the food provided was inedible.

On or around June 12, 2025, Ms. Diaz Martinez was moved to the Chittenden Correctional Facility ("Chittenden") in South Burlington, Vermont. In Chittenden, Ms. Diaz Martinez continued to suffer from anxiety and depression.

On June 17, 2025, Ms. Diaz Martinez was released pursuant to this Court's order. Since her release, Ms. Diaz Martinez rarely leaves her house due to anxiety. She fears that she will be arrested by ICE officers again if she leaves her home. Slowly, Ms. Diaz Martinez is returning to a normal diet and building up her appetite after not eating for several days. At night, she is plagued by nightmares of the time she spent in detention. Recently, Ms. Diaz Martinez found a therapist to talk to about the trauma she endured following her arrest and her time in detention. Though she is slowly recovering physically, she needs continued professional help to recover from the trauma caused by her arrest and her time in detention.

Argument

The Respondents argue this Court should reconsider their order because of legal errors in the Court's decision. Because Ms. Diaz Martinez is clearly in 8 U.S.C. § 1226 proceedings, and because the Respondents' interpretation[1] is contrary to the statute, congressional intent, and longstanding agency practice, the Court's order of June 17, 2025 should stand. In addition, the government misallocates the burden – which rests squarely on the government – to justify Ms. Diaz Martinez's detention. Finally, the government misunderstands the holding in *Thuraissigiam* which does not preclude the Court's order of release as the proper remedy in this case.

I. Ms. Diaz Martinez is clearly in 8 U.S.C. § 1226 proceedings

Noncitizens who enter without inspection have always been subject to § 1226 proceedings, rather than 8 U.S.C. § 1225. At the time of her entry into the United States, DHS did not categorize Ms. Diaz Martinez as an applicant for admission under § 1225. *See* Notice to Appear ("NTA"), Exh. 1. She was detained – and released – pursuant to § 1226. *See* Order of Release of Recognizance, Exh. 2. Courts have differentiated § 1225 detention and § 1226 detention by stating that § 1225 is part of a process that "generally begins at the Nation's borders and ports of entry, where the Respondent must determine whether a [noncitizen] seeking to enter the country is admissible." *See Vazquez v. Bostock*, 2025 U.S. Dist. LEXIS 78395, at *40 (W.D. Wash. Apr. 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)). The sole mechanism authorizing release of individuals detained for § 1225 expedited removal is through a

[1] The government has articulated multiple different, and indeed conflicting, bases for Ms. Diaz Martinez's detention. First, they argued that she was detained pursuant to both § 1225 and § 1226, then solely § 1225, but they did not clarify whether Ms. Diaz Martinez would be subject to expedited removal proceedings. Petitioners, despite orders from this Court, still have not received documents describing the legal basis for Ms. Diaz Martinez's sudden re-detention on June 3, 2025.

grant of humanitarian parole under INA § 212(d)(5)(A). *Jennings,* 583 U.S. at 300; *see also Matter of Cabrera-Fernandez,* 28 I&N Dec. 747, 748 (2023). In contrast, § 1226 "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *See Vazquez*, 2025 U.S. Dist. LEXIS 78395, at *8, (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022)). When discussing § 1226, the Supreme Court describes that it applies to noncitizens living "inside the United States" but may still be subject to removal, including noncitizens "who were inadmissible at the time of entry." *Vazquez*, 2025 U.S. Dist. LEXIS 78395, at *40 (quoting *Jennings*, 583 U.S. at 288).

Noncitizens, such as Ms. Diaz Martinez, who were previously released into the U.S. under orders of recognizance and are now present in the United States cannot be subject to mandatory detention and expedited removal under § 1225. *See Cleberson Oliveira Gomes v. Patricia H. Hyde, et al.*, 1:25-cv-11571-JEK, Doc. 19 Filed 7/7/2025 (Kobick, J. 7/7/2025), Exh. 8 ("Because Gomes was arrested [...] and detained pursuant to Section 1226, he is subject to Section 1226(a)'s discretionary detention framework…"). Ms. Diaz Martinez's NTA initiated removal proceedings under 8 U.S.C. § 1229(a) when it ordered her to appear before an Immigration Judge. *See* NTA, Exh. 1. DHS had the choice to place her in § 1225 proceedings when she was first seeking entry into the U.S. in April 2024, but chose instead to release her on her own recognizance. *See* NTA, Exh. 1; *See* Order of Release of Recognizance, Exh. 2. Her release was not a grant of humanitarian parole, making it clear that she was never subject to § 1225. *See Matter of Cabrera-Fernandez,* 28 I&N at 748 (finding that if the noncitizen was subject to § 1225(b), DHS would not have been able to authorize release on their own recognizance).

Upon entering the United States without inspection, Ms. Diaz Martinez was apprehended and detained. Similar to the *Matter of Cabrera-Fernandez,* Ms. Diaz Martinez was issued a NTA, marked as a noncitizen present in the United States, and charged with inadmissibility to the United States under § 212(a)(6)(A)(i). *See* NTA, Exh. 1. Then, she was released on recognizance, pursuant to DHS's authority under INA § 236, and placed in removal proceedings under § 1229(a). *See* Order of Release of Recognizance, Exh. 2. Not only does § 1226 apply, but DHS had recognized that Ms. Diaz Martinez was in § 1226 proceedings – they could not have otherwise released her on her own recognizance. 8 USC § 1229(a); *see also Jennings*, 583 U.S. at 287 ("As noted, § 1226 applies to [noncitizens] already present in the United States."). It is clear based on Ms. Diaz Martinez's Order of Release of Recognizance that she has never been in § 1225 removal proceedings but rather § 1226 proceedings. *See* Order of Release of Recognizance, Exh. 2.

Given Ms. Diaz Martinez is clearly within § 1226 proceedings, her June 2025 arrest was unlawful. Under § 1229(a), there was no lawful basis to rearrest Ms. Diaz Martinez and detain her while she is still in immigration proceedings. Ms. Diaz Martinez attended her immigration court hearing in compliance with the order of the government. *See* NTA, Exh. 1. She was subsequently arrested without an administrative warrant or a judicial warrant. DHS has failed to provide any documentation pertaining to the arrest of Ms. Diaz Martinez. Moreover, Ms. Diaz Martinez was initially released on personal recognizance. *See* Order of Release of Recognizance, Exh. 2. Following her initial release, there has been no material changes in circumstance in her case to warrant this arrest. *See* Matter of Sugay, 17 I&N Dec. 637, 640 (BIA 1981) (The Board of Immigration Appeals ("BIA") placed the following limitation on rearrest authority: "where a previous bond determination has been made by an immigration judge, no change should be made

by [DHS] absent a change of circumstance.") As of this filing, DHS still has not provided any documentation to prove why Ms. Diaz Martinez was arrested in June 2025.

II. Noncitizens who are present without being admitted or paroled are not subject to 8 U.S.C. § 1225(b).

Under § 1225(b)(2)(A), noncitizens like Ms. Diaz Martinez who are arrested well after the point where they could be considered to be "seeking admission" are not subjected to mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A); *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020). As a noncitizen who has been present in the U.S. for over a year who was apprehended in Massachusetts, far from any border, she is clearly not subject to § 1225 proceedings. The fact that Ms. Diaz Martinez was inadmissible at the time of her entry does not mean that the government can later and arbitrarily decide that she is now subject to mandatory detention under § 1225. *See e.g. Vazquez*, 2025 US Dist LEXIS 78395, at *33. In an analogous case filed this month, this Court found that noncitizens detained under § 1226 are not subject to § 1225(b)(2) proceedings. *See Cleberson Oliveira Gomes v. Patricia H. Hyde, et al.*, 1:25-cv-11571-JEK, Doc. 19 Filed 7/7/2025 (Kobick, J. 7/7/2025), Exh. 8.

A. The Respondents' position runs counter to the text of the statute and congressional intent

The Respondents leave out the key language of § 1225(b)(2)(A) which is that the mandatory detention provision only applies to "[a noncitizen] seeking admission" who is not clearly and beyond a doubt entitled to be admitted. *See* 8 U.S.C. 1225(b)(2)(A). As the BIA has reasoned elsewhere, the statutory use of the present progressive term ("seeking"), rather than the

past tense ("sought"), should "impl[y] some temporal or geographic limit." *See Matter of M-D-C-V-*, 28 I&N at 23 (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-2 (9th Cir. 2020) ("[t]he use of the present progressive tense, 'arriving,' rather than the past tense, 'arrived,' implies some temporal or geographical limit, so that [noncitizens]…who are encountered near the border may be subject to the contiguous territory provision."). The specific reference to those who are "seeking admission" is consistent with the statute which is focused on – as the title of § 1225 indicates – the inspection of recent arrivals. That section does not address noncitizens who are already living in the United States, such as Ms. Diaz Martinez.

The Respondents' application of § 1225 to all inadmissible noncitizens already present in the U.S. would put it at odds with § 1226, which by its very terms also applies to persons who are inadmissible. *See* 8 U.S.C. § 1226(c)(1)(A), (c)(1)(D). Applying § 1225(b)(2)(A) to such a broad category of individuals would render the statutory language of § 1226 superfluous, which specifically addresses inadmissible individuals, determines bond guidelines for inadmissible individuals, and subjects a subset of inadmissible individuals to mandatory detention. *See* 8 U.S.C § 1226. Interpreting the mandatory detention provisions of § 1225(b)(2)(A) to cover all applicants for admission who are not covered by § 1225(b)(1) would render entire sections of § 1226 meaningless, and thus is contrary to the basic canons of statutory construction. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Consumer Data Indus. Ass'n v. Frey*, 26 F.4th 1, 7 (1st Cir. 2022); *see also Vazquez*, 2025 US Dist LEXIS 78395, at *38; *see also Cleberson Oliveira Gomes v. Patricia H. Hyde, et al.*, 1:25-cv-11571-JEK, Doc. 19 Filed 7/7/2025 (Kobick, J. 7/7/2025), Exh. 8 ("If Section 1225(b)(2) applied to noncitizens who are arrested on a warrant while residing in the United States, it would render Section 1126(c)(1)(E)'s criminal conduct

criterion superfluous whenever the noncitizen is inadmissible under Sections 1182(a)(6)(A) or (a)(7).").

A further analysis of recent legislative action confirms this interpretation. As the District Court in *Vazquez* noted, Congress passed the Laken Riley Act in January 2025, which amended a category of those subject to mandatory detention under § 1226(c). *See* Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E); *see also Vazquez*, 2025 US Dist LEXIS 78395, at *8, 41-2; *see also Cleberson Oliveira Gomes v. Patricia H. Hyde, et al.*, 1:25-cv-11571-JEK, Doc. 19 Filed 7/7/2025 (Kobick, J. 7/7/2025), Exh. 8. The Act expanded mandatory detention for noncitizens inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A), those, like Ms. Diaz Martinez, who are present in the U.S. without being admitted or paroled *and* were arrested for, charged with, or convicted of certain crimes. *See id.* However, if the Respondents' reading of § 1225(b)(2)(A) was correct, these inadmissible noncitizens would already be subject to mandatory detention under this statute. *See* Resp't Mot. to Reconsider, ECF No. 25 at 11-2. This interpretation would render entire sections of the recent Congressional action in LRA superfluous and thus contrary to the canons of statutory interpretation. *See Stone v. INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."); *see also Vazquez*, 2025 US Dist LEXIS 78395, at *40-2.

B. The Respondents' position runs contrary to longstanding agency practice

The Respondents' argument that Ms. Diaz Martinez, as an applicant for admission, is subject to mandatory detention contrasts with decades of agency precedent. *See* Resp't Mot. to Reconsider, ECF No. 25 at 10. When Executive Office for Immigration Review ("EOIR") promulgated the regulations implementing § 1226, the agency expressly recognized: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or

paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of [Noncitizens], 62 Fed. Reg. 10312, 10323, (Mar. 6, 1997). As discussed *supra*, noncitizens detained pursuant to § 1225(b) are subject to mandatory detention and thus expressly not eligible for bond under § 1226. As clearly stated on her NTA, Ms. Diaz Martinez is a noncitizen present without having been admitted or paroled; thus she is eligible for bond and cannot be detained pursuant to § 1225(b). *See* NTA, Exh. 1.

The Respondents' argument closely mirrors the argument made by certain Immigration Judges in Tacoma, WA. The Tacoma Immigration Court, contrary to practice and precedent across the rest of the country, consistently found that noncitizens who were detained after crossing the border and were charged as being present without having been admitted or paroled were subject to mandatory detention pursuant to § 1225(b) and thus not eligible for bond. *See Vazquez*, 2025 US Dist LEXIS 78395, at *2. The BIA rejected this argument and overturned their findings several times. In September 2023, the BIA remanded a case for the IJ to determine conditions of custody after the IJ erroneously found they had no jurisdiction over the matter because the applicant entered the U.S. without being admitted or paroled. See *Matter of XXX XXX XXX* , AILA Doc. No. 23101604 (BIA Sept. 1, 2023), Exh. 3. In October, the BIA again remanded a case from a Tacoma Immigration Judge, finding that because the Respondent's NTA marked them as a noncitizen "present without admission or parole," they were not subject to the detention provisions under INA § 235(b), 8 U.S.C. § 1225(b). *See* Appeal ID 5549981 (BIA Oct. 17, 2023), Exh. 5. In December 2023, the BIA reiterated their position for a third time, finding that a noncitizen who was placed directly into removal proceedings under § 1229(a) was thus not subject to mandatory detention under § 1225(b)(1) or (b)(2) because DHS had elected to place

them directly into removal proceedings without placing them in expedited removal first. *See* Appeal ID 5454441 (BIA Dec. 14, 2023), Exh. 4. Here, DHS likewise elected to place Ms. Diaz Martinez directly into removal proceedings under § 1229a instead of first placing her in expedited removal under § 1225.[2] Thus, she was not – and cannot currently be – subject to detention under § 1225(b).

The Washington District Court came to the same conclusion in *Vazquez v. Bostock*. There, the Court granted a preliminary injunction after the plaintiff was denied bond on the same grounds. Relying on the BIA's long standing practice, the canon of statutory interpretation, and congressional intent, the Court determined that the plaintiff was likely to succeed on the merits in his argument that noncitizens present in the U.S. and apprehended and detained pursuant to § 1226 were entered subsequently into removal proceedings under § 1229(a), and thus were not subject to mandatory detention under § 1225(b). *See Vazquez*, 2025 US Dist LEXIS 78395, at *32-3. The BIA and District Courts have repeatedly rejected the Respondents' argument. Ms. Diaz Martinez is not subject to detention under § 1225(b).

III. Respondents bear the burden of justifying Ms. Diaz Martinez's detention

Contrary to the Respondents' argument, under 1226(a), the government bears the burden of justifying a noncitizen's detention. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *see also Cleberson Oliveira Gomes v. Patricia H. Hyde, et al.*, 1:25-cv-11571-JEK, Doc.

[2] *Matter of Q. Li* does not apply in Ms. Diaz Martinez's case because, as explained above, upon her arrival into the United States, DHS opted to detain her under INA § 236, and not under INA §235. Unlike the respondent in *Matter of Q. Li*, who at the time of her arrest at the border was released on parole under INA § 212(d)(5)(A), Ms. Diaz Martinez was released on her own recognizance pursuant to INA § 236. As *Matter of Q. Li* makes plain, "[t]he only exception permitting the release of [noncitizens] detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1181(d)(5)(A)." *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025); *see also Matter of Cabrera-Fernandez,* 28 I&N at 748.

19 Filed 7/7/2025 (Kobick, J. 7/7/2025), Exh. 8 ("At that hearing, the government will bear the burden of demonstrating that Gomes poses a danger to the community or a flight risk."). The government must either "(1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk." *Hernandez-Lara*, 10 F.4th at 41. In determining whether a noncitizen poses a danger to the community, the government is far more equipped than a detained noncitizen to meet the burden of proof on the question. *See Velasco Lopez v. Decker*, 978 F.3d 842, 852-3 (2d Cir. 2020) (In determining whether Velasco Lopez was a flight risk nor a danger to the community the "[g]overnment had substantial resources to deploy includ[ing] computerized access to numerous databases and to information collected by DHS, DOJ, and the FBI, as well as information in the hands of state and local authorities").

Additionally, it is contrary to the public interest to place the burden of proof on the detained noncitizen because of the risks and costs for noncitizens. *See Hernandez-Lar*a, 10 F.4th at 33. These risks include "needless detention [and consequently]... substantial social and financial costs" to the individual and their families. *Id*. Here, Ms. Diaz Martinez's physical and mental health were severely impacted as a result of her detention. She was unable to communicate with counsel, and her physical and mental health suffered substantially. She and her family also faced "social and financial costs" as a result of her detention. Ms. Diaz Martinez's United States Citizen husband fell into a deep depression and his lights and gas were turned off. *See generally* Affidavit of Wiliz De Leon Cordero, Exh. 6. Ms. Diaz Martinez's step daughter also suffered as a result of Ms. Diaz Martinez's detention; her school called a psychologist to check on her mental health. *See* Ambar De Leon's Letter of Support, Exh. 7.

IV. Finally, Respondents misunderstand the ruling in *Thuraissigiam*

The Respondents use *DHS v. Thuraissigiam* to justify the unlawful detention of Ms. Diaz Martinez; however, they misunderstand this ruling. *DHS v. Thuraissigiam,* 591 U.S. 103, 140 (2020). The District Court for the W. D. of Washington in Padilla described how *Thuraissigiam* was not about due process rights in a detention claim. *See Padilla v. U.S. Imm & Customs Enf't*, 704 F. Supp. 3d 1163, 1171-2 (W.D. Wash. 2023). As the District Court reasoned, the Court in *Thuraissigiam* only decided the question of the Due Process Clause's applicability in the context of someone seeking admission, not in the context of someone seeking a due process right to be free from detention. *See id.* at 1170 (asserting that *Thuraissigiam*'s holding is "necessarily constrained to challenges to admissibility to the United States."); *see also Thuraissigiam*, 591 U.S. at 107 (holding that a noncitizen "at the threshold of initial entry" does not have any greater rights beyond administrative review under the Due Process Clause). The District Court concluded that *Thuraissigiam* did not foreclose the Plaintiffs' due process claim because the class plaintiffs in *Padilla* "do not challenge the admission process in any way or assert a right to remain in the United States. They merely seek a chance to apply for release on bond pending resolution of their bona fide asylum claims that remain to be resolved in standard removal proceedings." *See id.*

Ms. Diaz Martinez clearly established a domicile in the United States and is not subject to the decreased due process rights of a noncitizen who is initially entering the country. She satisfies both the criteria necessary to establish a domicile: she is physically present in the U.S. and has an intent to remain indefinitely. 8 C.F.R. § 213a.1; *White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996) ("To establish domicile, one must show: (1) physical presence within the United States; and (2) intent to remain in the United States indefinitely."). As a result, she is not

subjected to the limited due process rights of a noncitizen who is "at the threshold of initial entry." *Thuraissigiam*, 591 U.S. at 107.

Thus, this Court is not constrained in its authority by the decision in *Thuraissigiam*. *Thuraissigiam* does not apply to immigration detention. Ms. Diaz Martinez's case is also distinct from *Thuraissigiam* as she is not a noncitizen "at the threshold of initial entry." *Id*. In the case of Ms. Diaz Martinez's unlawful detention, release was the appropriate remedy.

Conclusion

For the foregoing reasons, the Court should not reconsider its decision.

Respectfully Submitted

For the Petitioner

/s/ Derege B. Demissie

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Dated: July 9, 2025

EXHIBIT 1

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID:392908215 FINS #:1342621783 DOB: 05/07/1996

File No: A245 945 724

Event No:IMB2404000007

In the Matter of:

Respondent: KARY MIRIOSY DIAZ MARTINEZ currently residing at:

FAILED TO PROVIDE ADDRESS EOIR-33 DOCKET

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of DOMINICAN REPUBLIC and a citizen of DOMINICAN REPUBLIC ;
3. You arrived in the United States at or near SAN YSIDRO, CA , on or about April 1, 2024 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

JFK BLDG, 15 NEW SUDBURY, #320 BOSTON MA 022030002

(Complete Address of Immigration Court, including Room Number, if any)

on June 03, 2025 (Date) at 01:00 PM (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

THOMAS J PARISH Digitally signed by THOMAS J PARISH Date: 2024.04.02 09:44:50 -04:00

Acting Deputy Field Office Director in Charge

(Signature and Title of Issuing Officer)

Date: April 02, 2024 San Diego, California

(City and State)

DHS Form I-862 (6/22) Page 1 of 3

EXHIBIT 2

S. Department of Homeland Security

Order of Release on Recognizance

File No: A245 945 724
Date: April 02, 2024
Event No:IMD2404000007

Name: KARY MIRIOSY DIAZ MARTINEZ

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in ([redacted]) (person) to AS INDICATED ON THE ATTACHED OREC G-56
(Name and Title of Case Officer)

at _____ on _____ at _____
(Location of DHS Office) (Day of each week or month) (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the immigration officer listed above.
☒ You must not violate any local, State, or Federal laws or ordinances.
☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.
☐ Other: _____

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.

THOMAS J PARISH
Date: 2024.04.02 09:46:04 -04'00'
0998217914.CBP
(Signature of DHS Official)

Acting/Patrol Agent in Charge
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

CARLOS R CHAVEZ
Date: 2024.04.02 09:53:50 -05'00'
0072078737.CBP
(Signature of Immigration Officer Serving Order)

KARY DM
(Signature of Alien)

04/02/2024
(Date)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.
☐ The alien was taken into custody for removal.

(Signature of Immigration Officer Canceling Order) (Date)

Form I-220A (Rev. 08/01/07) N

EXHIBIT 3

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

[redacted], A[redacted]

Respondent

FILED
Sep 01, 2023

ON BEHALF OF RESPONDENT: Caroline K. Medeiros, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Malphrus, Deputy Chief Appellate Immigration Judge; Petty, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker
Appellate Immigration Judge Petty, see concurring opinion

HUNSUCKER, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's February 28, 2023, bond order denying his request for a change in custody status. The Immigration Judge issued a bond memorandum on March 3, 2023, setting forth the reasons for the bond decision. The Department of Homeland Security ("DHS") filed a response brief agreeing with the respondent that he is entitled to a custody redetermination hearing.[1] The appeal will be sustained and the record remanded for further proceedings.

The Immigration Judge concluded that because the respondent last entered the United States without being admitted or paroled, she was without jurisdiction to redetermine the respondent's custody status (IJ at 1-3).

We acknowledge the analysis of the Immigration Judge. However, both the respondent and the DHS have filed briefs arguing that the Immigration Judge may redetermine the conditions of the respondent's custody. Further, we are unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here. Accordingly, we will remand this case so that the respondent may receive a custody redetermination hearing before the Immigration Judge.

ORDER: The respondent's appeal is sustained.

[1] An unsolicited brief was also submitted by amicus curiae in support of the respondent's appeal. In light of our disposition of the case, we chose to reject the brief submitted by amicus curiae to avoid further delay in the respondent's case.

AILA Doc. No. 23101604. (Posted 10/16/23)

A[redacted]

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

PETTY, Appellate Immigration Judge, concurring opinion

I write separately solely to note my dissatisfaction with DHS's presentation to the Board in this case. DHS submits that the Immigration Judge's legal conclusion was inconsistent with the position taken by the Solicitor General in *Biden v. Texas*, 142 S. Ct. 2528 (2022), both in the briefs and at oral argument at the Supreme Court. Relying on our decision in *Matter of Mangabat*, 14 I&N Dec. 75, 78 (BIA 1972), DHS submits that the Solicitor General's position is binding on the Board and, by extension, on Immigration Judges (*see* DHS Br. at 9 (purportedly quoting *Matter of Mangabat* for the proposition that "[t]he views of the [Attorney General] as expressed in the briefs filed by the Office of the Solicitor General with the Court are binding on the BIA.")).

I am unable to locate the quote DHS attributed to *Matter of Mangabat*, or even anything similar to it, anywhere in that decision. Nor was I able to find it anywhere else. And while it is possible that authority for the proposition DHS puts forward exists somewhere—notwithstanding the Board's own independent delegation of authority from the Attorney General, *see* 8 C.F.R. § 1003.1(d)(i)-(ii)—I have not found that, either.

DHS also claimed that "[a]t oral argument before the U.S. Supreme Court, Solicitor General Prelogar reiterated the Department of Justice's position that INA § 236 is an appropriate means of release for noncitizens who entered the United States without inspection. *See* Tr. of Oral Arg. at 44-45" (DHS Br. at 10 n.8). What the Solicitor General actually said was "*DHS's* long-standing interpretation has been that 1226(a) [INA § 236(a)] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Transcript of Oral Argument at 44-45, *Biden v. Texas*, 142 S. Ct. 2528 (2022) (No. 21-954) (emphasis added). She then emphasized that it has been "the agency's consistent interpretation." *Id.* at 45. However long-standing, and regardless of whether the Solicitor General mentions it during oral argument in the Supreme Court, none of DHS's legal interpretations can bind the Board or Immigration Judges. *See* INA § 103(g)(2), 8 U.S.C. § 1103(g)(2).

EXHIBIT 4

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Dec 14, 2023

ON BEHALF OF RESPONDENT: Ling Li, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Conroe, TX

Before: Goodwin, Appellate Immigration Judge; Pepper, Temporary Appellate Immigration Judge; Crossett, Temporary Appellate Immigration Judge[1]

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's bond order dated September 5, 2023, denying change in custody status. The Immigration Judge issued a bond memorandum explaining his decision on September 19, 2023. The Department of Homeland Security ("DHS") has not responded to the appeal. The appeal will be sustained, and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is an applicant for admission, who on or about July 12, 2023, entered the United States without inspection, and was apprehended between ports of entry shortly after entering (IJ at 4). *See* section 235(a)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(a)(1). On the same day, July 12, 2023, DHS issued a Notice to Appear ("NTA") commencing removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a (IJ at 4).

The Immigration Judge determined that the respondent was subject to mandatory detention under section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2), and denied the respondent's request for a change in custody status based on a lack of jurisdiction (IJ 4-5). On appeal, the respondent argues that the Immigration Judge had jurisdiction to redetermine custody status because the statutory scheme governing his detention is section 236(a) of the INA, 8 U.S.C. § 1226(a) (Respondent's Br. at 3-9).

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

Specifically, the respondent contends he is not subject to mandatory detention under sections 235(b)(1) or (b)(2) of the INA, 8 U.S.C. §§ 1225(b)(1)-(2), because he was never placed in expedited removal proceedings, he was not "transferred" from expedited removal proceedings into removal proceedings upon a credible fear determination, nor was he found not to have a credible fear of persecution (Respondent's Br. at 3-9). Instead, DHS opted to place him directly into removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (IJ at 4; Respondent's Br. at 9).[2] *See Matter of E- R- M- & L-R-M-*, 25 I&N Dec. 520, 521-22 (BIA 2011) (explaining that it is within DHS' discretion to process noncitizens described in section 235(b) by either placing them into section 235 expedited removal proceedings or placing them directly into section 240 removal proceedings).

The Immigration Judge would have lacked jurisdiction to redetermine the respondent's custody status if DHS had ever placed the respondent in expedited removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (explaining that an applicant for admission is subject to mandatory detention when he or she has been continuously in expedited removal proceedings); *Matter of M-S-*, 27 I&N Dec. 509, 510-12 (A.G. 2019) (requiring mandatory detention of individuals placed in expedited removal proceedings and later transferred to full removal proceedings). This is not the case here. As the respondent was placed in section 240 removal proceedings at the inception of proceedings, he is not subject to mandatory detention. *See generally Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747-48 (BIA 2023) (discussing the operation of the detention schemes under section 235 and 236 of the INA for arriving noncitizens and noncitizens who entered without inspection and apprehended near the U.S.-Mexico border).

The procedural posture and facts of the present matter are analogous with those in *Matter of D-J-*, 23 I&N Dec. 572, 572-76 (A.G. 2003), where the Attorney General reviewed eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). Moreover, the respondent does not fall within the classes of persons for whom Immigration Judges are prohibited from redetermining the conditions of custody. *See* 8 C.F.R. § 1003.19(h)(2)(i)(A)-(E).

Therefore, we will vacate the Immigration Judge's September 5, 2023, decision and remand this matter for further proceedings consistent with the foregoing. In remanding, we express no opinion as to the ultimate outcome of the proceedings. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's September 5, 2023, order is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.

[2] The Immigration Judge's factual findings in the Bond Memorandum, the respondent's contentions on appeal, and the factual allegations in the NTA and its date of issuance inform us that the respondent was never placed in expedited removal proceedings.

EXHIBIT 5

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Oct 17, 2023

ON BEHALF OF RESPONDENT: Siovhan S. Ayala, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Borkowski, Temporary Appellate Immigration Judge[1]

BORKOWSKI, Temporary Appellate Immigration Judge

The respondent appeals from the Immigration Judge's August 1, 2023, decision denying his request for a redetermination of his custody status. We will sustain the appeal, and remand the record for further proceedings and issuance of a new decision.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's request for a redetermination of his custody status on the grounds that she lacked jurisdiction over the request (IJ at 2-4). The Immigration Judge reasoned that the respondent is an applicant for admission as defined at section 235(b)(1)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(1)(A), and therefore subject to the mandatory custody provisions at § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) (IJ at 3-4).

Under our de novo review, we hold that the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a redetermination of his custody status. Section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A), applies to "arriving aliens," and deems them to be "applicants for admission." *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 525 and n. 4 (BIA 2011) ("Under section 235(a)(1) of the Act, arriving aliens are 'deemed' to be applicants for admission.").

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

The Notice to Appear issued by the Department of Homeland Security ("DHS") did not charge the respondent as an arriving alien, however, but as an "alien[] present without permission or parole," under INA § 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (IJ at 1). Thus, the respondent is not an arriving alien, and is not subject to the mandatory custody provisions of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Thus, the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a change in his custody status (IJ at 2-4).

We also hold that the law of the case directs that the Immigration Judge has jurisdiction to determine the respondent's request for a change in his custody status. The electronic records of the Executive Office for Immigration Review reflect that on August 23, 2023, the Board issued a decision on the respondent's appeal from a May 15, 2023, Immigration Judge decision denying a request for change in the respondent's custody status on the grounds that the Immigration Judge lacked jurisdiction.[2] The Board's August 23, 2023, decision remanded the record for the Immigration Judge to conduct a bond hearing and issue a decision that addressed relevant custody factors, including the respondent's flight risk (BIA at 1-2, Aug. 23, 2023).

Thus, we will remand the record for the Immigration Judge to conduct a bond hearing pursuant to the Immigration Judge's authority under INA § 236(a), 8 U.S.C. § 1226(a), and to issue a decision adjudicating the respondent's request for a change in his custody status. Accordingly, the following order will be issued.

ORDER: The respondent's appeal is sustained, and the record is remanded for further proceedings in accordance with the foregoing opinion and issuance of a new decision.

[2] The May 15, 2023, decision was issued by an Immigration Judge in Oakdale, Louisiana. Venue in these proceedings was subsequently changed to the Tacoma, Washington Immigration Court (IJ at 1-2).

EXHIBIT 6

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT
BOSTON, MASSACHUSETTS

In the Matter of:	)	
Kary DIAZ MARTINEZ	)	**File No.: A 245 945 724**
In Removal Proceedings	)	

AFFIDAVIT OF WILIZ DE LEON CORDERO

I, Wiliz De Leon Cordero, being duly sworn, affirm under the pains and penalties of perjury that the following is true and correct to the best of my knowledge and belief. This affidavit was drafted with the assistance of my attorneys based on oral communications to them in Spanish and it is true and correct to the best of my knowledge and belief.

Personal Background

1. My name is Wiliz De Leon Cordero. I am 40 years old. I am the husband of Kary Diaz Martinez. Since Kary was detained, I've become depressed. It is difficult to leave home to go to work. The lights and the gas in my home are turned off and I cannot bring myself to do anything about it. When I am not working, I spend my time pacing around my house, thinking about what Kary is going through. I need to see a doctor about my depression and pain but I just stay home waiting for Kary's release. Since Kary arrived in Providence, we spend all of our time together. Her arrest is the first time that we haven't seen each other every day.

2. I was born in Azua, Dominican Republic. I became a naturalized citizen of the United States in 2014. I moved to Providence, Rhode Island in 2017. Currently, I have three jobs to provide for my family. I drive for uber, work for Ocean State Behavioral in children's services, and work part time in the kitchen at Mangos Restaurant. With Ocean State Behavioral, I volunteer and play sports with the children placed in my care. I like this job because I help children with difficulties and am a mentor to the child I primarily work with. At Mangos Restaurant I've learned valuable kitchen skills that I will use once I open my own restaurant. I also like this job because I work to feed and deliver hot meals to the elderly people in the community.

Kary and I met and fell in love in the Dominican Republic

3. I met Kary when I was visiting Azua in 2021. Kary worked in a furniture store, and we talked about the inventory. The store did not have the furniture I was looking for, but I asked Kary for her phone number to keep in touch. We began a long-distance

relationship. Kary and I fell in love. Kary is a very attentive and loving person to me and our families. Kary treats my daughter as her own and takes care of her nephew with autism. She treats me with love and kindness. This year on my birthday, Kary surprised me with three gifts, morning, noon, and night, to make my birthday special.

4. Kary told me about her life in the Dominican Republic while we were in a long-distance relationship. Kary was studying to become a teacher to better her education. Kary told me she was also scared to be in the Dominican Republic because her ex-partner and the father of her children often hit her and threatened her. She was scared of her ex-partner and traumatized by the relationship. She did not like being alone with men and she had a hard time trusting men because of all the abuse she had suffered.

Kary is a very supportive and loving wife

5. In April of 2024, Kary came to the United States and lived with me, my sister Adelca De Leon, and my daughter Ambar De Leon. Kary has a great relationship with my sister and is an amazing stepmother to my daughter. In the time Kary has lived in the United States, she and my daughter have grown very close and love each other very much. Kary also goes to church and made plans to convert to Catholicism. Kary always follows the rules, makes friends wherever she goes, and has never had a problem with anyone.

6. In May 2025, Kary, Ambar, and I moved to a new home in Providence. On May 31, 2025, Kary and I got married. Kary and I had big plans for our lives together as husband and wife. We wanted to have kids and open a restaurant together. I currently work part time for a restaurant and Kary helps me deliver food and wash dishes. She is a hard worker and a very supportive wife.

7. When Kary and I went to court on June 3, 2025, we were scared to go but we wanted to follow the law and do things the right way. I was hopeful that everything would turn out alright that day because Kary is a good person that has never been in any legal trouble. I was positive that she would come home with me after the immigration hearing.

Since Kary was detained, my physical and mental health have suffered

8. When Kary was taken from us by ICE, it was the worst day of my life. Since then, my physical and mental health have taken a turn for the worse. I can't sleep or eat. I constantly worry about Kary.

9. When I speak with Kary on the phone, my heart breaks. She can't eat or shower where they have her. Her body hurts and her hair is falling out from the stress. She has to sleep on a hard floor, and she has no bed and no blankets. She says it's freezing there, and she is very scared.

10. Whenever I speak with Kary, she is always crying. She is scared and traumatized. She needs us and we need her back. My family has not been the same since she was taken from us.

11. I hope that Kary is released and comes back home. Kary is a sensitive person that has never experienced getting in trouble with the law. Being detained has traumatized her, and she will need mental health care. I miss my wife and I hope we can continue working towards a future together when she's released. I don't know what I'll do without her and she needs me too.

Signed, under the pains and penalty of perjury of the Commonwealth of Massachusetts. This declaration has been read to me in my native language of Spanish. It is true and correct to the best of my knowledge, and I understand its meaning.

Dated: June 11, 2025

Wiliz De Leon

Wiliz De León Cordero

EXHIBIT 7

June 9, 2025

Dear Judge,

My name is Ámbar De León, I am 17 years old, and Kary M Diaz Martinez is my stepmother. I am a United States Permanent Resident. I am currently a junior at Mount Pleasant High School in Providence, Rhode Island.

I want to tell you about my relationship with my stepmother, Kary Díaz, who I love very much.

My relationship with Kary is quite good. She's been giving me that motherly love, the unconditional love that mothers give, since my mother doesn't live here. Kary is also the mother of two little ones, so she understands what kids need. I love her like my mother because she's the one who listens to me when I'm not feeling well and who listens to me when I need to express everything I feel.

I'm a person who overthinks things a lot, and it hurts me a lot. She's the only person I can talk to freely without having to hide anything or keep things that hurt me to myself. She's the one who takes care of me and always cooks while my father works. I don't like being home alone, and Kary is always there for me whenever I need something.

Kary is the most loving person I've ever met, and she's also very kind. If you need a favor, even if she doesn't know you very well, she won't say no. I need her to come home.

Since she was taken by ICE on June 3, I have felt horrible I can't sleep. Every day is worse without her in the house. I have been struggling so much.

A teacher at my school called a psychologist to talk to me because she feels that I am very different and very sad since Kary was taken. But the only person I want to talk to is my stepmother, Kary.

With Kary gone, I am often alone in the house since my dad has to work to support us. I have many goals, and I need her to be there so she can see me achieve them, and support me.

I don't know if you understand how I feel right now but I really wouldn't like to see anyone else go through this. It's very difficult and every night I pray for her to come back.

Please let her come back home. I ask you from the bottom of my soul – I need her here with us. Thank you for considering my letter.

Best,

Ámbar De León

EXHIBIT 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLEBERSON OLIVEIRA GOMES, Petitioner, v. PATRICIA H. HYDE, New England Field Office Director, U.S. Immigration and Customs Enforcement; MICHAEL KROL, Special Agent, Homeland Security Investigations, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM U.S. Secretary of Homeland Security, Respondents.	No. 1:25-cv-11571-JEK

MEMORANDUM AND ORDER ON
PETITION FOR A WRIT OF HABEAS CORPUS

KOBICK, J.

Petitioner Cleberson Oliveira Gomes, a citizen of Brazil, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 seeking an order of immediate release from detention. In May 2024, Gomes was arrested and detained by U.S. Customs and Border Protection ("CBP") officers after crossing into the United States between ports of entry. CBP released Gomes on an Order of Recognizance and thereafter filed a Notice to Appear in the Chelmsford Immigration Court, thus commencing removal proceedings against him under 8 U.S.C. § 1229a. For over a year, Gomes abided by the conditions in the Order of Recognizance and resided in the United States.

On May 29, 2025, following a scheduled hearing in Immigration Court, U.S. Immigration and Customs Enforcement ("ICE") officers arrested Gomes pursuant to a warrant and ordered him detained under 8 U.S.C. § 1226. Section 1226(a) establishes a discretionary detention framework for noncitizens who are "arrested and detained" "[o]n a warrant issued by the Attorney General." Noncitizens detained under Section 1226(a) have the right to request a bond hearing before an Immigration Judge, at which the government bears the burden to prove that continued detention is justified. After Gomes requested a bond hearing, however, the government claimed for the first time that he is instead detained under 8 U.S.C. § 1225(b)(2) and ineligible for bond. In contrast with Section 1226(a)'s discretionary detention scheme, Section 1225(b)(2) mandates detention if an immigration officer determines that a noncitizen seeking admission to the United States is not clearly and beyond a doubt entitled to be admitted. Agreeing that Gomes is detained under Section 1225(b)(2), the Immigration Judge deemed him ineligible for bond.

Gomes' petition for a writ of habeas corpus contends that he is not lawfully detained under Section 1225(b). He requests that the Court order his immediate release from detention or, in the alternative, hold a bond hearing. The government responds that although Gomes is in removal proceedings and was arrested on a warrant citing Section 1226, Gomes is, and has always been, subject to mandatory detention under Section 1225(b)(2). Should the Court conclude that Gomes is detained under Section 1226 rather than Section 1225(b)(2), however, the government contends that the Immigration Court should determine in the first instance whether he should be released on bond.

Gomes' statutory construction better aligns with the text of Sections 1225(b) and 1226 and better harmonizes the two statutes. The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of

certain noncitizens and is the sole exception to Section 1226(a)'s discretionary framework. Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework. Gomes' petition will accordingly be granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge. At that hearing, the government will bear the burden of demonstrating that Gomes poses a danger to the community or a flight risk.

BACKGROUND

I. Statutory and Regulatory Framework.

Two statutes principally govern the detention of noncitizens[1] pending removal proceedings: 8 U.S.C. §§ 1225 and 1226.[2] Section 1225 applies to "applicants for admission," who are, as relevant here, noncitizens "present in the United States who [have] not been admitted." 8 U.S.C. § 1225(a)(1).[3] All applicants for admission must be inspected by an immigration officer. *Id.* § 1225(a)(3). Certain applicants for admission are then subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020). In other cases, if the examining immigration officer determines that an applicant for admission is not "clearly and beyond a doubt entitled to be admitted," Section 1225(b)(2) provides that the applicant for admission "shall be detained for" standard removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018).[4] A noncitizen

[1] The terms "noncitizen" and "alien" are used interchangeably throughout this Order.

[2] Another statute, 8 U.S.C. § 1231, governs the detention of noncitizens who have been ordered removed.

[3] In the immigration context, the term "admission" means "the lawful entry of [an] alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

[4] Standard removal proceedings are governed by 8 U.S.C. § 1229a, and they involve "an evidentiary hearing before an immigration judge" at which the noncitizen "may attempt to show

detained under Section 1225(b)(2) may be released only if he is paroled "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released.").

Whereas Section 1225(b) "authorizes the Government to detain certain aliens *seeking admission into the country*," Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added). Section 1226(a) establishes a discretionary detention framework for noncitizens arrested and detained "[o]n a warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least $1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). The arresting immigration officer makes an initial custody determination, but noncitizens have the right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). Bond may be denied only if the government "either (1) prove[s] by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove[s] by a preponderance of the evidence that [the noncitizen] poses a flight risk." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

In addition to bond, the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole. *See* 8 U.S.C. § 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS' conditional parole

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that he or she should not be removed." *Thuraissigiam*, 591 U.S. at 108. These proceedings commence when a charging document, called a Notice to Appear, is filed in Immigration Court. 8 C.F.R. § 1003.14(a); *see* 8 U.S.C. § 1229a.

authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).[5]

Section 1226(c) is the sole exception to Section 1226(a)'s discretionary detention framework. *See* 8 U.S.C. § 1226(a) ("Except as provided in subsection (c) . . . the Attorney General . . . may"); *id.* § 1226(c)(1) ("The Attorney General *shall* take into custody any alien who . . ." (emphasis added)). Until recently, Section 1226(c) required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See id.* §§ 1226(c)(1)(A)-(D). Through the Laken Riley Act, enacted in January 2025, Congress expanded Section 1226(c)'s mandatory detention requirement to a new category of noncitizens, but only where two criteria are met. *See* Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (adding 8 U.S.C. § 1226(c)(1)(E)). Under Section 1126(c)(1)(E), the Attorney General must also detain a noncitizen if he (i) is inadmissible because he is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), obtained documents or admission through misrepresentation or fraud, *id.* § 1182(a)(6)(C), or lacks valid documentation, *id.* § 1182(a)(7); and (ii) "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement

[5] The sample Order of Recognizance posted on ICE's website indicates that it is issued in accordance with 8 U.S.C. § 1226. *See* U.S. Dep't of Homeland Security, U.S. Immigration and Customs Enforcement, *Order of Release on Recognizance*, https://www.ice.gov/doclib/detention/checkin/I_220A_OREC.pdf.

officer offense, or any crime that results in death or serious bodily injury to another person," 8 U.S.C. §§ 1226(c)(1)(E)(i)-(ii).

II. Factual Background.

Gomes is a native and citizen of Brazil. ECF 1, ¶ 1; ECF 8, ¶ 7. On May 12, 2024, he entered the United States and encountered CBP officers near the southern border, in the area of Calexico, California. ECF 1, ¶ 1; ECF 8, ¶ 8. The officers arrested Gomes without a warrant and detained him because he did not possess a valid immigrant visa or other valid entry document. ECF 8, ¶¶ 8-9; *see* ECF 1, ¶ 1. Later that day, CBP issued Gomes a Notice to Appear that charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)[6] and released him on an Order of Recognizance. ECF 8, ¶ 9.[7] On May 13, 2024, ICE filed the Notice to Appear in the Chelmsford Immigration Court, thus commencing standard removal proceedings against him under 8 U.S.C. § 1229a. ECF 8, ¶ 10; ECF 14 (Notice to Appear).

Approximately one year later, on May 29, 2025, Gomes appeared in the Chelmsford Immigration Court for a removal hearing. ECF 1, ¶ 3; ECF 8, ¶ 11. At the hearing, counsel for ICE made an oral motion to terminate the proceedings for purposes of placing Gomes in expedited removal proceedings. ECF 1, ¶ 4; ECF 8, ¶ 11; ECF 13-4. The Immigration Judge declined to rule

[6] Section 1182(a)(6)(A)(i) reads in full: "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6)(A)(i).

[7] The government contended at the hearing that it should not have released Gomes on an Order of Recognizance because he had been arrested without a warrant and was therefore subject to mandatory detention under Section 1225(b)(2). CBP's decision to conditionally parole Gomes under Section 1226(a) appears to have nevertheless been consistent with its longstanding practice of conditionally paroling noncitizens arrested without a warrant near the border. *See* Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

on the oral motion at the hearing. *See* ECF 1, ¶ 6. She instead gave Gomes ten days to respond to the motion and set a new hearing for December 4, 2025. *Id.*; *see* ECF 8, ¶ 11; ECF 13-4.

Also on May 29, 2025, ICE obtained a warrant for Gomes' arrest, which stated that it was issued under 8 U.S.C. §§ 1226 and 1357. ECF 8, ¶ 12; ECF 13-3 (warrant). ICE officers arrested Gomes pursuant to that warrant as soon as he exited the Chelmsford Immigration Court. ECF 1, ¶ 7; ECF 8, ¶ 12; ECF 13-5, at 5. Later that day, ICE issued a Notice of Custody Determination, which stated that Gomes was detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act"—i.e., pursuant to 8 U.S.C. § 1226. ECF 13-2.[8]

Gomes is currently detained at the Plymouth County Correctional Facility in Plymouth, Massachusetts. ECF 8, ¶ 13. He requested a bond hearing before an Immigration Judge, which was held on June 12, 2025. *See* ECF 13-1; ECF 13-5, at 1; 8 C.F.R. § 1236.1(d)(1). The government did not seek to justify Gomes' detention at the hearing by arguing that he posed a danger to the community or a flight risk. *See Hernandez-Lara*, 10 F.4th at 41. Citing a recent decision issued by the Board of Immigration Appeals ("BIA"), the government instead argued that Gomes is categorically ineligible for bond because he is detained under Section 1225(b)(2) rather than Section 1226(a). *See* ECF 13-5, at 2 (citing *Matter of Q. Li*, 29 I. & N. Dec. 66 (B.I.A. 2025)). In *Matter of Q. Li*, the BIA held that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States . . . and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. 1225(b), and is ineligible for any subsequent release on bond under . . . 8 U.S.C. § 1226(a)." 29 I. & N. Dec. at 69. The Immigration Judge denied Gomes' request for

[8] In his declaration, ICE Assistant Field Office Director Keith M. Chan asserts that "[o]n May 29, 2025, ICE detained [Gomes] pursuant to its authority [under] 8 U.S.C. § 1225(b)." ECF 8, ¶ 12. The Court does not credit this assertion. The assertion is in the nature of a legal conclusion, not a fact, and in any event is contradicted by the Notice of Custody Determination completed by the ICE officer who ordered Gomes detained. *See* ECF 13-2.

bond later that day, stating only that "[p]er *Matter of Q. Li*, [Gomes is] not eligible for bond." ECF 13-1 (italics added). Gomes' removal proceedings remain pending in the Chelmsford Immigration Court. ECF 8, ¶ 14.

On May 30, 2025, before he had been denied bond by the Immigration Judge, Gomes filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241 in this Court. ECF 1. The petition alleges that his detention violates the Due Process Clause of the Fifth Amendment and federal immigration statutes. *See id.* ¶¶ 19-24. Gomes names as defendants the following individuals in their official capacities: Patricia Hyde, the New England Field Office Director for ICE; Michael Krol, the New England Special Agent in Charge for Homeland Security Investigations for ICE; Todd Lyons, the Acting Director for ICE; and Kristi Noem, the U.S. Secretary of Homeland Security. *Id.* ¶¶ 13-18. After receiving the government's response to the petition, ECF 7, and Gomes' reply, ECF 13, the Court held a hearing and took the petition under advisement, ECF 16. At the Court's invitation, the parties submitted supplemental briefs after the hearing. ECF 17, 18.

DISCUSSION

I. Exhaustion of Administrative Remedies.

This Court has jurisdiction to review habeas petitions filed by immigration detainees who assert that they are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The government does not contest this Court's jurisdiction, but it contends that Gomes' challenge to his detention is premature because he has not yet exhausted his administrative remedies by appealing the Immigration Judge's denial of his request for release on bond to the BIA.

"There are two species of exhaustion: statutory and common-law." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). "The former deprives a federal court of jurisdiction, while the latter

'cedes discretion to a [federal] court to decline the exercise of jurisdiction.'" *Id.* (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 174 (1st Cir. 2016)). Because exhaustion is not required by statute in this context, the government's exhaustion argument is measured against the "more permissive" common-law exhaustion standard. *Id.* at 256; *see Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) ("[C]ourts have more latitude in dealing with exhaustion questions when Congress has remained silent.").

While "the exhaustion doctrine ordinarily 'serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency,' and, thus, should customarily be enforced," there are "'circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.'" *Portela-Gonzalez*, 109 F.3d at 77 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992)). As relevant here, "a court may consider relaxing the [exhaustion requirement] when unreasonable or indefinite delay threatens unduly to prejudice the subsequent bringing of a judicial action." *Id.* "And, relatedly, if the situation is such that 'a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim,' exhaustion may be excused even though 'the administrative decisionmaking schedule is otherwise reasonable and definite.'" *Id.* (quoting *McCarthy*, 503 U.S. at 147). Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies. *See Brito*, 22 F.4th at 256 ("'[E]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest.'" (quoting *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986))).

Waiver of the exhaustion requirement is warranted here because Gomes is likely to experience irreparable harm if he is unable to seek habeas relief until the BIA decides an appeal

of his request for release on bond. According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024. *See Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850, at *5 (W.D. Wash. Apr. 24, 2025). The Immigration Judge denied Gomes' request for release on bond on June 12, 2025. *See* ECF 13-1. Assuming the BIA is processing appeals at the same rate as last year, Gomes' appeal would likely not be resolved until 2026, giving rise to the possibility that he would endure several additional months of detention that may be unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *See Bois*, 801 F.2d at 468.

Many of the policy concerns animating the common-law exhaustion requirement are, moreover, absent here. An Immigration Judge has already considered and denied Gomes' bond request. *Cf. Brito*, 22 F.4th at 255-56 (requiring exhaustion where, among other things, the petitioners failed "to raise their alternatives-to-detention claims before their respective [immigration judges]"). That denial was based on a legal conclusion regarding the interaction between Section 1225(b)(2) and Section 1226, not on any factual determinations particular to Gomes' case. And, in any event, the underlying factual record is straightforward and undisputed. *Cf. McCarthy*, 503 U.S. at 145 (exhaustion requirement promotes judicial efficiency by creating "a useful record for subsequent judicial consideration, especially in a complex or technical factual context"). In these circumstances, where Gomes' liberty interests "'weigh heavily against requiring administrative exhaustion,'" waiver of exhaustion is warranted. *Portela-Gonzalez*, 109 F.3d at 77 (quoting *McCarthy*, 503 U.S. at 146); *see also, e.g., Villalta v. Sessions*, No. 17-cv-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) ("[T]he potential for irreparable harm to Petitioner, in the form of continued unlawful denial of bond hearings for potentially four months or more, persuades the Court that waiver of the exhaustion requirement is appropriate in

the instant case." (quotation marks and brackets omitted)); *Rodriguez*, 2025 WL 1193850, at *10 (similar) (collecting cases).

II. Lawfulness of Detention.

The central question posed by Gomes' habeas petition is whether he is lawfully detained under Section 1225(b)(2), as the government now contends, or is instead subject to discretionary detention under Section 1226(a), as the government represented in its Notice of Custody Determination. Section 1226(a) "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," *Jennings*, 583 U.S. at 289, and it applies when a noncitizen is "arrested and detained" "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a). That is precisely what occurred here. In May 2024, CBP conditionally paroled Gomes into the United States on an Order of Recognizance issued under Section 1226(a). *See* ECF 8, ¶ 9; *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. at 747. Gomes then resided in the country for over a year until, on May 29, 2025, he was arrested on a warrant issued pursuant to Section 1226. *See* ECF 8, ¶ 12; ECF 13-3. Following that arrest, Gomes was ordered detained, again pursuant to Section 1226. *See* ECF 13-2. Gomes thus argues that because he was arrested and detained pursuant to Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework, and he should have received a full bond hearing.

The government disagrees, contending that Gomes' current detention is governed by Section 1225(b)(2). Section 1225(b)(2) "authorizes the Government to detain certain aliens seeking admission into the country." *Jennings*, 583 U.S. at 289. If an immigration officer "determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," Section 1225(b)(2) requires that the noncitizen be detained for removal proceedings under Section 1229a. 8 U.S.C. § 1225(b)(2)(A). When he was inspected by a CBP officer in May

2024, Gomes failed to clearly and beyond a doubt demonstrate that he was entitled to be admitted. *See* ECF 8, ¶¶ 8-9. It is therefore undisputed that Gomes was, at that time, an applicant for admission subject to mandatory detention under Section 1225(b)(2). But instead of keeping Gomes detained after that encounter, CBP conditionally paroled him into the United States on an Order of Recognizance pursuant to its authority under Section 1226(a). *See id.* ¶ 9. And when Gomes was arrested by ICE in May 2025, it was on the authority of a warrant issued under Section 1226 rather than Section 1225(b)(2). *See* ECF 13-3. Thus, the question is whether Section 1225(b)(2) continues to mandate the detention of a noncitizen, like Gomes, who has been conditionally paroled into the United States pursuant to Section 1226, is in the midst of standard removal proceedings, and is otherwise subject to Section 1226(a)'s discretionary detention framework.

Cardinal principles of statutory interpretation guide the Court's analysis. "A court's lodestar in interpreting a statute is to effectuate congressional intent," and "the quest to determine this intent must start with the text of the statute itself." *City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020). Canons of interpretation may aid in this analysis, including the principle that statutes should be construed so that "'no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). The Court may also look to the structure of the statutory scheme, the context surrounding the statutory provision, any relevant legislative history, and Congress's purpose in enacting the statute. *See, e.g.*, *Gundy v. United States*, 588 U.S. 128, 140-41 (2019); *Barr*, 954 F.3d at 31.

The Court begins with the text of Section 1226(a). Following a noncitizen's arrest and detention "[o]n a warrant," and pending the completion of removal proceedings, Section 1226(a) provides that the Attorney General: (1) "*may* continue to detain the arrested alien"; (2) "*may*

release the alien on . . . bond"; or (3) "*may* release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B) (emphases added). The thrice-used permissive word "may" indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant. *See Jennings*, 583 U.S. at 300 ("'the word "may" . . . implies discretion,'" whereas "'the word "shall" usually connotes a requirement'" (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016))). And while Section 1226(a) expressly carves out certain "criminal" noncitizens from its discretionary framework, it does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2). *See* 8 U.S.C. § 1226(a) ("*Except as provided in subsection (c) . . .*, the Attorney General . . . *may*" (emphases added)). "That express exception" to Section 1226(a)'s discretionary framework "implies that there are no *other* circumstances under which" detention is mandated for noncitizens, like Gomes, who are subject to Section 1226(a). *Jennings*, 583 U.S. at 300 (citing A. Scalia & B. Garner, Reading Law 107 (2012)). Interpreting Section 1225(b)(2) to mandate Gomes' detention in these circumstances would contravene Congress's intent that Section 1226(a)'s discretionary detention framework apply to all noncitizens arrested on a warrant except those subject to Section 1226(c)'s carve-out. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) ("that Congress has created specific exceptions" to the applicability of a statute or rule "proves" that the statute or rule generally applies absent those exceptions).

The government's interpretation of Section 1225(b)(2) would also render a recent amendment to Section 1226 superfluous. Section 1226(c)(1)(E)—added to Section 1226 in 2025 by the Laken Riley Act—makes a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); "*and*" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the

"criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied. Thus, when a noncitizen is arrested on a warrant, his inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except him from Section 1226(a)'s discretionary detention framework. Only where the criminal conduct criterion is also satisfied has Congress determined that such a noncitizen must be subject to mandatory detention. *See Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) ("[I]f 'Congress has made its intent' in the statute 'clear, we must give effect to that intent.'" (quoting *Miller v. French*, 530 U.S. 327, 336 (2000))).

Interpreting Section 1225(b)(2) to apply to noncitizens who are arrested on a warrant while residing in the United States, as the government does, would render Section 1226(c)(1)(E)'s criminal conduct criterion superfluous for noncitizens who are inadmissible on two of the three grounds specified in the inadmissibility criterion. *See* 8 U.S.C. § 1226(c)(1)(E)(i) (covering noncitizens who are inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7)). After all, a noncitizen who is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), or who lacks requisite documentation, *id.* § 1182(a)(7), is unlikely to prove to an examining immigration officer that he "is clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A). Such is the case with Gomes: he has been charged with inadmissibility under Section 1182(a)(6)(A), ECF 14, and the record shows that he could have been charged with inadmissibility under Section 1182(a)(7), ECF 8, ¶ 8. If Section 1225(b)(2) applied to noncitizens who are arrested on a warrant while residing in the United States, it would render Section 1126(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 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."); *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."); *Bilski v. Kappos*, 561 U.S. 593, 608 (2010) ("[The canon against surplusage], of course, applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times."). The Court therefore concludes that the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States. Because Gomes was arrested on such a warrant and detained pursuant to Section 1226, he is subject to Section 1226(a)'s discretionary detention framework and, accordingly, is eligible for bond. *See* 8 U.S.C. § 1226(a)(2)(A).

The government resists this conclusion, arguing that it is contrary to the BIA's recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66. But that case is factually distinct, and its reasoning does not alter the Court's analysis. The respondent in *Matter of Q. Li* was a noncitizen who was arrested without a warrant and detained under Section 1225(b) shortly after crossing into the United States without being inspected and admitted. *Id.* at 67. The Department of Homeland Security ("DHS") paroled her into the country under 8 U.S.C. § 1182(d)(5)(A) on the condition that she be required to regularly report to a DHS field office. *Id.* While the respondent was on parole, however, DHS learned that she was "wanted in Spain for travel document forgery and human smuggling crimes." *Id.* When the respondent showed up for her next scheduled appointment, DHS took her into custody and issued her a Notice to Appear, which automatically terminated her parole under 8 U.S.C. § 1182(d)(5)(A). *See id.* at 67, 70. The respondent sought

bond under Section 1226(a), but an Immigration Judge denied her request, concluding that she was detained under Section 1225(b)(2) and was therefore ineligible for bond. *See id.* at 67. The BIA affirmed, holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States . . . and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under . . . 8 U.S.C. § 1226(a)." *Id.* at 69.

The BIA's reasoning in *Matter of Q. Li* is inapposite here because Section 1226(a) applies only where a noncitizen is arrested "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). There is no indication that the respondent in *Matter of Q. Li* was arrested on such a warrant. To the contrary, the BIA explained that her parole "was automatically terminated when she was served with a notice to appear," causing her to "return . . . to the custody' under [Section 1225(b)] 'from which [she] was paroled.'" *Id.* at 70 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see also* 8 C.F.R. § 212.5(e)(2) ("When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified."). Thus, the respondent lacked any apparent basis to argue that her detention was governed by Section 1226(a), and, because her grant of humanitarian parole under Section 1182(d)(5)(A) had been terminated, DHS was required by Section 1225(b)(2) to continue detaining her.

The circumstances here are entirely different. After being arrested in May 2024, Gomes was immediately issued a Notice to Appear and then conditionally paroled on an Order of Recognizance issued under Section 1226(a). *See* ECF 8, ¶ 9; *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. at 747. Over a year later, he was taken into custody because he was arrested on a warrant issued under Section 1226, not because humanitarian parole under Section 1182(d)(5)(A) automatically terminated. *See* ECF 13-3. *Matter of Q. Li* consequently does not conflict with this

Court's conclusion that Gomes is subject to discretionary detention under Section 1226(a) rather than mandatory detention under Section 1225(b)(2).[9]

Gomes' habeas petition will, accordingly, be granted. Gomes is not detained under Section 1225(b)(2), but rather under Section 1226. And under Section 1226(a) and its implementing regulations, he is entitled to a bond hearing before an Immigration Judge at which the government must prove by clear and convincing evidence that he poses a danger to the community, or prove by a preponderance of the evidence that he is a flight risk, if it seeks to continue detaining him. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1); *Hernandez-Lara*, 10 F.4th at 41. The government was not held to those burdens because the Immigration Judge erroneously concluded that Gomes is detained under Section 1225(b)(2) and therefore ineligible for bond. ECF 13-1. Unless and until the government meets its burden, Gomes' continued detention is unlawful.

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[9] The BIA opined, in a footnote, that "[o]nce 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)] through the post-hoc *issuance* of a warrant." *Matter of Q. Li*, 29 I. & N. Dec. at 69 n.4 (emphasis added). This statement, which was not material to the BIA's holding, does not alter the Court's analysis. It does not address the core issue in this case, because Section 1226(a)'s discretionary detention scheme is not triggered by the "issuance of a warrant." *Id.* It applies only where a noncitizen has been "arrested and detained" "[o]n a warrant." 8 U.S.C. § 1226(a). The BIA's footnote is best read to address only the situation where a noncitizen is arrested without a warrant pursuant to Section 1225(b) and remains continually detained.

Nevertheless, to the extent the footnote could be read to suggest that the BIA would conclude that Gomes is subject to mandatory detention under Section 1225(b)(2), this Court respectfully disagrees with that conclusion. "[C]ourts must exercise independent judgment in determining the meaning of statutory provisions," and they "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024). For the reasons given in this opinion, the Court concludes that noncitizens arrested and detained on a warrant issued under Section 1226 while residing in the United States are subject to Section 1226(a)'s discretionary detention scheme rather than Section 1225(b)(2)'s mandatory detention provision.

III. Remedy.

Gomes seeks an order for his immediate release or, in the alternative, a bond hearing before this Court. Neither of those remedies is warranted at this juncture. Gomes first contends that the Court should order his release "because the only basis proffered by the [government] for his detention, § 1225(b)(2), does not apply to him." ECF 17, at 2. This contention misses the mark because, as discussed, Gomes remains subject to Section 1226(a)'s discretionary detention scheme.[10] Gomes next argues that this Court, rather the Immigration Court, should hold a bond hearing. *See id.* at 3. He has not, however, cited any relevant authority in support of this request. And because the Immigration Court originally concluded that Gomes was categorically ineligible for bond, it has not yet had the opportunity to consider the merits of Gomes' request for release on bond under Section 1226(a). *See* ECF 13-1. Nor has the government yet attempted to carry its burden to demonstrate that Gomes' continued detention is warranted. *See Hernandez-Lara*, 10 F.4th at 41. These considerations counsel in favor of permitting the Immigration Court to pass on the merits of Gomes' request for bond in the first instance.

The Court accordingly agrees with the government that the appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers Gomes' eligibility for bond under Section 1226(a). *See* ECF 18, at 2. The First Circuit routinely orders this remedy in cases where it has concluded that a noncitizen detained under Section 1226(a) was denied bond because the Immigration Court failed to apply the correct legal standards. *See, e.g., Hernandez-Lara,* 10

[10] The sole case Gomes cites in support of this request is inapposite. In *Martinez v. Hyde*, another session of this Court ordered the petitioner's immediate release because the government was unable to produce an expedited order of removal "or any other document substantiating the legality of Petitioner's detention." ECF 22, at 4, No. 25-cv-11613-BEM (D. Mass. June 17, 2025). Because Gomes was arrested on a warrant, Section 1226(a) provides a lawful basis for his detention at present.

F.4th at 46 (permitting the government to hold a new bond hearing and stipulating the burden of proof to be applied at that hearing); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021) (same); *Brito*, 22 F.4th at 256-57 (similar). The Court will therefore remand this case to the Immigration Court with instructions to consider Gomes' eligibility for bond under Section 1226(a).

CONCLUSION AND ORDER

For the foregoing reasons, Gomes' petition for a writ of habeas corpus under 28 U.S.C. § 2241, ECF 1, is GRANTED. The respondents are ORDERED to provide Gomes with a bond hearing under 8 U.S.C. § 1226(a) within 10 days of this Order. The respondents are ENJOINED from denying bond to Gomes on the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2). The respondents are further ORDERED to file a status report on or before July 21, 2025, stating whether Gomes has been granted bond, and, if his request for bond was denied, the reasons for that denial.

SO ORDERED.

/s/ Julia E. Kobick
JULIA E. KOBICK
UNITED STATES DISTRICT JUDGE

Dated: July 7, 2025