UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

[redacted]

Petitioner,

v.

DERRICK STAMPER, Chief Patrol Agent, Houlton Sector, U.S. Customs and Border Protection, RODNEY SCOTT, Commissioner, U.S. Customs and Border Protection, DAVID WESLING, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General,

Respondents.

Case Number: 2:25-cv-00479-SDN

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

The Petitioner [redacted] by and through undersigned counsel, submits this reply in support of his petition for a writ of habeas corpus.

The Court's earlier decision in this case on Mr. [redacted] Motion for Temporary Restraining Order was correctly decided. Dkt. 6, September 19, 2025. So were its three subsequent decisions granting habeas petitions for noncitizens who, like Mr. [redacted] were detained in the country's interior without a warrant, long after 8 U.S.C. § 1225(b)(2) could possibly authorize their detention and support denying them an individualized bond hearing. *Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21,

2025) (jointly granting the petitions in *Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, *Lema Tamay v. Scott*, 2:25-cv-438-SDN, and *Tenesaca Lema v. Scott*, 2:25-cv-00439 (collectively, the "*Chogllo Chafla* cases")). The Respondents have not even attempted to distinguish the *Choglla Chafla* cases, nor could they. *Cf.* Dkt. 21, September 24, 2025 ("Respondents' Return and Response"). Accordingly, as the Court did in those cases, the Court should grant Mr. [redacted] petition and order the Respondents to release him until he is provided an individualized bond hearing before an Immigration Judge, as 8 U.S.C. § 1226(a)(2) requires.

ARGUMENT

1. The facts here are not meaningfully distinguishable from the Court's earlier decisions on the same issue.

The facts here[1] are not meaningfully distinct from the facts that the Court relied on to reach its decisions in the *Chogllo Chafla* cases.

Here, Respondents do not contest that Mr. [redacted] entered the U.S. in between ports-of-entry over two years before his recent re-detention by Respondents and was not detained at the time. Dkt. 21, September 24, 2025, at 2 ("Respondent's Return and Response").[2] The Petitioners in the *Chogllo Chafla* cases also entered the U.S. in between ports-of-entry over

[1] While not material to any legal issues that decide this case, the contention that the Court's TRO caused Mr. [redacted] to miss a scheduled Master Calendar Hearing at the Chelmsford Immigration Court on September 22, 2025 is not correct. Respondent's Return and Response at 4. First, there is no evidence that the Notice to Appear ("NTA") was ever served on Mr. [redacted] or filed with the Chelmsford Immigration Court. Dkt. 21-1 at 5–6 (purporting to set a hearing time of 1:30 a.m. and leaving the spaces on the certificate of service for date of service and the Respondent's signature blank); Dkt. 1-6 at 2–3 (Executive Office of Immigration Review ("EOIR") Automated Case Information query result indicating that, as of September 18, 2025, no new removal case against Mr. [redacted] had been initiated at the Chelmsford Immigration Court and indicating that "[t]here are no future hearings in this case"). Second, Respondents informed the Court at a status conference on the afternoon of September 22, 2025, that, as of then, there was no U.S. Immigration and Customs Enforcement and Removal Operations ("ICE ERO") bed space available for Mr. [redacted] at the Plymouth County Correctional Center.

[2] The Petition states that "on information and belief, Petitioner entered the United States without inspection in about June of 2023." Petition at 1. Petitioner's counsel was not able to confirm that fact before filing the Petition, because Respondents were holding Mr. [redacted] incommunicado in an unknown location. *See* Petition at 2. Though it is not material to any of the questions at issue here, Petitioner's counsel has since learned that Mr. [redacted] entered the country in about December of 2022.

two years before the detentions at issue and were not detained at the time. *Chogllo Chafla*, 2025 WL 2688541, at *2–3. Respondents here concede that Mr. [redacted] has not been placed into expedited removal and is not being detained under 8 U.S.C. § 1225(b)(1). Respondent's Return and Response at 8–9. The same is true in the *Chogllo Chafla* cases. *Chogllo Chafla*, 2025 WL 2688541, at *3 & n.6. The NTA purportedly issued to Mr. [redacted] on September 10, 2025 alleges that he is an "alien present in the United States who has not been admitted or paroled," not that he is "an arriving alien." Dkt. 21-1 at 5 (September 10, 2025 NTA); *see also* Dkt 1-3 at 2 (January 13, 2025 NTA). The same is true of the relevant NTAs in the *Chogllo Chafla* cases. *Chogllo Chafla*, 2025 WL 2688541, at *6. The Respondents concede that Mr. [redacted] recent re-arrest "was not made pursuant to a warrant." Dkt. 21 at 9 n.3; *see also* Dkt. 21-3 (I-213 narrative confirming that CBP arrested Mr. [redacted] without a warrant). The petitioners in the *Chogllo Chafla* cases were also detained without a warrant. *Chogllo Chafla*, 2025 WL 2688541, at *11.

To the extent Mr. [redacted] case differs from the *Chogllo Chafla* cases, it is because Respondents had already explicitly classified him as falling under 8 U.S.C. § 1226 and not 8 U.S.C. § 1225 when, in January of this year, they detained him, performed a custody determination, and then released him on conditional parole under 8 U.S.C. § 1226(a)(2)(B). Dkt. 1-2 at 2 (January 13, 2025 Form I-200, Warrant for Arrest of Alien); Dk. 1-4 at 2 (January 13, 2025 Form I-286, Notice of Custody Determination); Dkt. 1-5 at 2 (January 13, 2025 Form I-220A, Order of Release on Recognizance); *see also* Dkt. 1, September 18, 2025, at 2 ("Petition"). But that difference only strengthens Mr. [redacted] claims.

2. The Court's earlier orders were correctly decided and their reasoning applies with equal force here.

Because this case is not meaningfully distinguishable from the *Chogllo Chafla* cases and Respondents have not offered any persuasive reason the Court should depart from them, the Court should follow its decisions in those cases.

There, the Court correctly determined that it had jurisdiction to hear the noncitizens' petitions. *Chogllo Chafla*, 2025 WL 2688541, at *4. As the Court noted, 8 U.S.C. § 1252(b)(9) does not divest federal courts of jurisdiction to hear "independent claims 'collateral to' the removal process—such as those that 'cannot effectively be handled through the available administrative process.'" *Id.* (citing *Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 10 (1st Cir. 2007)). This includes "challenges to the legality of detention in the immigration context, *Aguilar*, 510 F.3d at 10, and "constitutional challenges regarding the availability of bail" in court, *id.* (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)). As in *Chogllo Chafla*, Mr. [redacted] claims "squarely fall within the context of challenging the legality and constitutionality of their detentions." *Chogllo Chafla*, 2025 WL 2688541, at *4 (citing *Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291, 2025 WL 1826118 (D. Me. July 2, 2025) (Walker, J.)).[3]

[3] Respondents' undeveloped argument that this Court should dismiss the Petition based on a failure to administratively exhaust is unavailing. Respondents' Return and Response at 2. The text of 28 U.S.C. § 2241 does not include any exhaustion requirement, and courts only apply it prudentially, as a matter of common law. *Lettieri v. Unit Team Manager English,* Civ. No. 25-cv-10859-LTS, 2025 WL 1342766, at *1 (D. Mass. May 8, 2025). Courts do not require exhaustion when exhaustion would be futile, such as when the "when the relevant administrative body 'has indicated predetermination of the issue.'" *Lamidi v. FCI Berlin, Warden*, Civil No. 25-cv-297-LM-TSM, Dkt. 14 (D.N.H. Sept. 15, 2025) (citing *Wright v. United States*, No. C19-5254-RBL-TLF, 2019 WL 2746630, at *7 (W.D. Wash. June 5, 2019)). Exhaustion would clearly be futile here. On July 8, 2025, the U.S. Department of Homeland Security ("DHS")—which Respondent Noem leads—promulgated a nationwide policy requiring its sub-agencies to misclassify bond-eligible noncitizens falling under 8 U.S.C. § 1226(a) as detained under 8 U.S.C. § 1225(b)(2), stating it had done so "in coordination with the Department of Justice," which Respondent Bondi leads. DHS, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), *available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. U.S. Customs and Border Protection ("CBP," which Respondent Scott leads and for which Respondent Stamper works) and U.S. Immigration

The Court likewise correctly interpreted 8 U.S.C. § 1225 and 8 U.S.C. § 1226 in the *Chogllo Chafla* cases, finding that 8 U.S.C. § 1225(b)(2) does not apply to noncitizens "who already have entered the country and been residing in the interior of the United States for several years," and that only 8 U.S.C § 1226(a) could possibly authorize continuing to detain the petitioners. *Chogllo Chafla*, 2025 WL 2688541, at *4–9. In doing so, it joined what appears to be the consensus of every federal district court that has examined the issue. *See, e.g.*, *id.* at *5 (collecting cases); *Hilario Rodriguez v. Moniz*, No. 25-12358, Dkt. 22, (D. Mass. Sept. 18, 2025) (Joun, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); Encarnacion v. Moniz, No. 25-12237, Dkt. 16 (D. Mass. Sept. 5, 2025) (Sorokin, J.), Romero v. Hyde, No. 25-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); Martinez v. Hyde, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); Gomes v. Hyde, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.); *see also Chogllo Chafla,* 2025 WL 2688541, at *5 (collecting cases); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (collecting cases).[4]

and Customs Enforcement ("ICE," which Respondent Lyons leads and for which Respondent Wesling works) are both agencies or sub-agencies of DHS. Then, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision requiring all Immigration Courts to misclassify noncitizens this way too. *Matter of Yajure Furtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). Both the BIA and the Immigration Courts are entities within the Executive Office of Immigration Review ("EOIR"), which is part of the U.S. Department of Justice. All the Respondents' agencies have adopted policies wrongly predetermining that he is not entitled to a bond hearing. In addition, exhaustion is not required when the claims turn purely on statutory construction. *Williams v. Warden, FCI Berlin*, -- F. Supp. 3d --, 2025 WL 2207024, at *6 (D.N.H. Aug. 4, 2025). The claims here do turn purely on statutory construction. *Chogllo Chafla*, 2025 WL 2688541, at *6 ("The plain language of the statutes themselves largely compels the conclusion that section 1226(a) applies to petitioners and like individuals.").

[4] The Respondents cite *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025), to suggest that there is not unanimity among the district courts that have analyzed this question. Respondents' Return and Response at 6. But the issue does not seem to have been contested in *Pena*, which was focused instead on whether an approved I-130 petition would overcome no-bond detention under § 1225(b)(2). *See Doe v. Moniz*, 2025 WL 2576819, at *5 n.7 (explaining that in *Pena* "the petitioner . . . did not argue that his detention should have been under Section 1226 and the decision does not discuss Section 1226 at all").

Based on that correct construction of the statute, Mr. [redacted] cannot now be detained under 8 U.S.C. § 1225(b)(2); he can only be detained, if at all, under 8 U.S.C. § 1226(a). Therefore, the Court should again find that "section 1225(b) does not apply to [Petitioner's] detention, and [he] may be subject to detention only as a matter of discretion pursuant to section 1226(a)." *Choglla Chafla*, 2025 WL 2688541, at *9.

In addition, the Court correctly determined in the *Choglla Chafla* cases that continued detention of noncitizens misclassified under 8 U.S.C. § 1225(b)(2) without a bond hearing violates their due process rights. *Chogllo Chafla,* 2025 WL 2688541, at *5. The Court's detailed consideration of a noncitizen's private liberty interest in being free from physical detention and the risk of an erroneous deprivation of that interest applies with equal force here. *See Chogllo Chafla*, WL 2688541, at *9–11 (citing, *inter alia*, *Mathews v. Eldridge*, 424 U.S. 319 (1976), *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), and *Rodrigues De Oliveira*, 2025 WL 1826118 at *6).[5] Regarding the risk of an erroneous deprivation, the record shows that Mr. [redacted] is not a flight risk: CBP previously determined Mr. [redacted] was not a flight risk when it determined he should be released on his own recognizance in January of 2025, Dkt. 1-4 at 2; there is no suggestion in Mr. [redacted] I-213 that he has ever missed any required ICE check-ins or Immigration Court dates, *cf.* Dkt. 21-1 at 1–4; and Mr. [redacted] remained on the scene and waited for local police after getting into a

[5] Respondents' argument that the existence of the automatic stay provision found at 8 C.F.R. § 1003.19(i)(2) goes against finding a weighty liberty interest here is wrong for at least two reasons. First, any appeal to the BIA on this issue would an exercise in futility, because the erroneous *Matter of Yajure Furtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) precedent would require the BIA to deny the appeal. Second, as federal district courts across the nation have held in recent weeks, the automatic stay provision itself violates due process. *See, e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) *Herrero Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025); *Alvarez Martinez*, 2025 WL 2598379 (S.D. Tex. Sept. 8, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Gunaydin v. Trump*, 2025 WL 1459154 (D. Minn. May 21, 2025); *Herrera Torralba v. Knight*, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Leal-Hernandez v. Noem*, 2025 2430025 (D. Md. Aug. 24, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Mohammed H. v. Trump*, 2025 WL 1692739 (D. Minn. June 17, 2025).

minor car accident in Waterville, Maine earlier this month, *id.* at 3.[6] The Court likewise correctly determined that, in a misclassification case like this, "the public interest weighs against detention without a hearing" and that "the government interest in avoiding any pre-detention process is minimal." *Chogllo Chafla,* 2025 WL 2688541, at *11 (citing, *inter alia*, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) and *Hernandez-Lara,* 10 F.4th at 33). Accordingly, as there, the Court should find that the Respondents violated due process and that "the *Mathews* factors weigh in favor of the Petitioner[] and compel a hearing on detention before an Immigration Judge where [he] may have the opportunity to be heard." *Chogllo Chafla,* 2025 WL 2688541, at *11.

Finally, the Court correctly determined in the *Chogllo Chafla* cases that the "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under the plain statutory text of 8 U.S.C. § 1226(a)." *Chogllo Chafla,* 2025 WL 2688541, at *11. Here, as in those cases, Mr. [redacted] is unlawfully detained without a warrant. Respondent's Return and Response at 9, n.3; Dkt. 21-1 at 3. Accordingly, here, as the Court did there, the Court should order the Respondents to provide Mr. [redacted] with a bond hearing before an Immigration Judge in accordance with 8 U.S.C. § 1226(a)(2), and to release Mr. [redacted] until they do. *Chogllo Chafla*, 2025 WL 2688541, at *11 n.9, *12.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. [redacted] petition for a writ of habeas corpus and order the Respondents to release Mr. [redacted] until he

[6] The Petition states that "[o]n information and belief, CBP detained Petitioner again on or about September 2025, somewhere in the vicinity of Portland, Maine and has held him incommunicado ever since." Petitioner's counsel was not able to confirm the location of Mr. [redacted] detention before filing the Petition. The record shows he was originally detained by local police in Waterville, Maine and then detained by CBP later that evening in Farmington, Maine. Dkt. 21-1 at 3.

is provided an individual bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a)(2),

Respectfully submitted this 26th day of September, 2025.

[redacted]

By and through his Counsel,

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