UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YOK

FRANCISCO ANTONIO CASTILLO LACHAPEL,

Petitioner,

v.

William JOYCE, in his official capacity as Disrict Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Atttorney General.

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Francisco Antonio Castillo Lachapel is a citizen of the Dominican Republic who was detained today as he attended his hearing at immigration court in Manhattan. On information and belief, his detention is part of a campaign underway by Respondents to detain individuals who they allege have been present in the U.S. for under two years at the time they attend their immigration court hearings. Respondents seek dismissal of ongoing removal proceedings, even for individuals like Mr. Castillo Lachapel who have been in the United States for over two years and who Respondents did not determine was inadmissible until over two years after his entry, who have submitted applications for asylum, and who have a U.S. citizen wife and step-child. Respondents detain individuals whether the motion is granted, denied, or no decision is made—masked, plainclothes agents encircle, handcuff and detain people after they leave the courtroom. Mr. Castillo Lachapel's detention as part of this campaign is unlawful and he brings this petition seeking his immediate release.

PARTIES

1. Petitioner Castillo Lachapel is citizen of the Dominican Republic who lives in New York City. He attended his regularly scheduled court appearance before an immigration court in Manhattan on June 4, 2025, and was detained by Respondents.

2. Respondent William Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

3. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office

is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on June 4, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this Court because Mr. Castillo Lachapel is currently detained in the Southern

District of New York, where he was taken into custody on June 4, 2025.

SPECIFIC FACTS ABOUT PETITIONER

8. Francisco Antonio Castillo Lachapel is a citizen of the Dominican Republic and a husband to a U.S. citizen and stepfather to a 7-year-old U.S. citizen, Kal-El Jefet Ortiz.

9. On information and belief, he entered the U.S. without inspection on or around June 2, 2022.

10. On September 28, 2022, Mr. Castillo Lachapel was issued a New York Driver's License, valid through May 26, 2027.

11. On June 5, 2023, Mr. Castillo Lachapel married U.S. citizen Nashaily Celeste Ortiz, born in the Bronx, New York.

12. On information and belief, Mr. Castillo Lachapel was stopped in a routine traffic stop in January 2025 while driving in Maine. On information and belief, he was not arrested for any crime but was detained by ICE and issued a Notice to Appear dated January 17, 2025. The NTA charges him with removability under 8 U.S.C. § 1182(a)(6)(A)(i) (relating to manner of entry).

13. Mr. Castillo Lachapel's Notice to Appear was docketed with EOIR on January 21, 2025. His A# is 226-161-735.

14. On information and belief, Mr. Castillo Lachapel has filed an I-589, Application for Asylum and Withholding of Removal.

15. Today, June 4, ICE moved to dismiss his removal proceedings based on changed circumstances, namely Respondents' expansion of expedited removal in January 2025. Mr. Castillo Lachapel opposed the motion and asked for more time, but the Immigration Judge granted the motion to dismiss over his objection—despite stating that he had a U.S. citizen wife and step-son and a pending asylum claim.

16. As Mr. Castillo Lachapel left the courtroom, he was detained by Respondents.

17. On information and belief, the sole basis for Respondents' re-detention of Mr. Castillo Lachapel is its own campaign to detain and place noncitizens attending immigration court hearings in expedited removal proceedings, not any change in the individual factors in Petitioner's case.

18. On information and belief, Mr. Castillo Lachapel is currently being subjected to expedited removal.

CAMPAIGN OF DETENTIONS

19. On or about May 20, 2025, Respondents began a nationwide campaign to seek dismissal of removal proceedings for people it alleges to be present in the U.S. for under two years and to detain individuals immediately after their appearance in immigration court.

20. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of protests such as that the person has minor children or medical conditions.

21. Attorneys from Make the Road New York have witnessed many of these hearings and detentions firsthand, including that of Mr. Castillo Lachapel, and observed people detained irrespective of whether motions to dismiss are granted, denied, or set over for further consideration.

22. Once detained, New Yorkers targeted by this campaign vanish for several days. Family members may not hear from them and the ICE locator, an online portal, often does not reflect their location for several days or reflects a detention center at which (according to facility staff there) detainees are not actually present.

23. In some cases of those with ongoing proceedings, like Mr. Castillo Lachapel, ICE then swiftly moves to transfer the case to the place of detention such as Texas or Louisiana.

24. ICE has not stated publicly whether a pending asylum application will be sufficient to trigger a credible fear interview.

LEGAL FRAMEWORK

25. The INA provides for removal proceedings to be the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. 1229a. Section 1229a(a)(3) states that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."[1]

26. "Jurisdiction vests, and proceedings before an Immigration Judge, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. § 1003.14(a). The only means to terminate the jurisdiction of the immigration court is a motion to dismiss or terminate. Dismissal in most cases requires that "Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." 8 C.F.R. § 239.2(a)(7).

27. Certain noncitizens may be ordered removed by an immigration officer under the expedited removal procedures described in 8 U.S.C. 1225(b). Expedited removal is a one- or two-stage process: the first is inspection by an immigration officer; the second, where applicable, is a credible fear interview by an asylum officer. For an individual who applies for admission at a port of entry, the immigration officer must first determine if the individual is a noncitizen who is inadmissible either because they have engaged in fraud or lack valid entry documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). If an individual claims to be a U.S. citizen, lawful permanent resident, or refugee, or to have been granted asylum, then the

[1] "Attorney General" in Section 1254a now refers to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. 1103; 6 U.S.C. 557.

individual is entitled to limited additional review. See 8 U.S.C. § 1225(b)(1)(C); 8 C.F.R. § 235.3(b)(5). Otherwise, if the officer concludes that the individual is inadmissible under either ground, the officer "shall" order the individual removed "without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). At any time during the process, the officer may allow the person to withdraw his or her application for admission and leave the country. 8 U.S.C. § 1225(a)(4).

28. Expedited removal orders are generally not subject to appeal to the Board of Immigration Appeals (BIA) and U.S. Court of Appeals. The potential forms of relief from the expedited removal process are much narrower and essentially require a showing of credible fear of return to the destination country, and adverse findings on credible fear are subject only to a limited review by an Immigration Judge without further review by the BIA. On information and belief, the government takes the position that people in expedited removal proceedings are not eligible for a bond hearing, but are rather mandatorily detained. *See* 8 U.S.C. § 1225.

29. One important limitation on expedited removal is that, as a matter of law, it cannot be applied to people who have been present in the United States for two years or more. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (expedited removal limited to noncitizens who, among other things, have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph").

30. At a bare minimum, "the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention." *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an

individual's removal, removing them also violates the Due Process Clause.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. 1225(b)(1)(A), AND IMPLEMENTING REGULATIONS; ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. 706(2)

31. On information and belief, Petitioner is currently being detained and subjected to expedited removal in violation of the Immigration and Nationality Act and implementing regulations.

32. First, the expedited removal statute cannot be applied to people who have been present in the United States for two years or more. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (expedited removal limited to noncitizens who, among other things, have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph"). Respondents cannot lawfully subject the Petitioner to expedited removal because he has been in the United States for over two years and was not alleged to be inadmissible until January 2025, over two years after his entry.

33. Second, Respondents cannot dismiss Petitioner's proceedings absent a change in the circumstances of *his case*, yet have done so anyway in violation of the Immigration & Nationality Act and Respondents' own implementing regulations. Section 1229a of Title 8 of the U.S. Code provides that, [u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United

States." No determination has yet been made whether Petitioner is to be removed from the United States in such proceedings. Further, Respondents own regulations call for an individualized assessment of changes in Petitioner's removal proceedings before such proceedings may be dismissed. No such changed circumstances have occurred here.

34. Third, Petitioner has a statutory right to apply for asylum, which he has done. 8 U.S.C. 1158(a). His sudden detention and Respondents' dismissal of his case—all a precursor to change of the removal regime to which he is subject—violates that right.

35. Respondents' actions violate the Immigration and Nationality Act and implementing regulations.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (UNLAWFUL APPLICATION OF EXPEDITED REMOVAL)

36. Petitioners reallege and incorporate by reference each and every allegation contained above.

37. On information and belief, Petitioner is currently being detained and subjected to expedited removal in violation of his constitutional right to due process of law.

38. Petitioner cannot be detained for, or subjected to, Expedited Removal because he has been continuously present in the United States for more than two years.

39. The Expedited Removal statute largely "precludes judicial review," and therefore challenges to "confinement and removal" under that statute fall within the "core" of the writ of habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025); *cf. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020) (holding attempt "to obtain additional administrative

review of his asylum claim" after Expedited Removal order was outside the "core" of habeas relief).

40. Accordingly, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of whether Petitioner is ineligible for detention and removal via Expedited Removal due to the length of his presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

41. Indeed, if there were no judicial review whatsoever of the immigration agencies' determinations that people have been present for less than two years, then the immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to Expedited Removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States.

COUNT THREE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (DETENTION)

42. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

43. Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in custody status. His detention is not rationally related to any immigration purpose; it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and it lacks any statutory

authorization. Moreover, he was not accorded sufficient process prior to his sudden re-detention by ICE.

44. Detention also interferes with Petitioner's ability to appeal or seek reconsideration of the motion to dismiss his removal proceedings.

COUNT FOUR

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

45. Petitioner realleges and incorporates by reference each and every allegation contained above.

46. ICE's policy of seeking dismissal of proceedings that were lawfully commenced, and thereby cutting off Mr. Castillo Lachapel's ability to proceed on his pending asylum application violates his constitutional right to due process.

COUNT FIVE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

47. Petitioner realleges and incorporates by reference each and every allegation contained above.

48. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious. Moreover, an action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation"

for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

49. Respondents' policy of seeking dismissal and then detaining individuals like Mr. Castillo Lachapel, who are in ongoing removal proceedings, is arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Declare that Petitioner's detention violates the Immigration and Nationality Act and implementing regulations;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Respondents' actions violate the Administrative Procedure Act;
6. Enjoin Petitioner's transfer out of the New York City area;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: June 4, 2025

/s/ Harold A. Solis
Harold A. Solis
Make the Road New York
301 Grove St.
Brooklyn, NY 11237
Tel (718) 418-7690 ext 4114
Harold.Solis@maketheroadny.org

Paige Austin
Make the Road New York
301 Grove St.
Brooklyn, NY 11237
Tel. (718) 418-7690
Paige.Austin@maketheroadny.org

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on June 4, 2025, I electronically filed the attached the foregoing Petition for Writ of Habeas Corpus and any accompanying Exhibits and Declarations with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Harold A. Solis
Harold A. Solis
Make the Road New York
301 Grove St.
Brooklyn, NY 11237
Tel (718) 418-7690 ext 4114
Harold.Solis@maketheroadny.org

Attorney for Petitioner