UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YOK

FRANCISCO 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. 1:25-cv- 04693

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Board of Immigration Appeals Cases

INTRODUCTION

Mr. Castillo was detained by Respondents on June 4, 2025 based on a mistake. Respondents believed he was amenable to expedited removal proceedings but, as he repeatedly told the agents who detained him and as Respondents now concede, that is incorrect. Since Mr. Castillo filed the instant petition, Respondents describe an eleventh-hour rush to clean up the mess caused by their erroneous expedited removal determination and baseless redetention of Mr. Castillo. But the only means to address their chaotic, error-ridden, and deeply harmful actions is to release Mr. Castillo from unlawful confinement, which Respondents have still not done. This is not a trifling indignity or one that Mr. Castillo and his U.S.-citizen wife and family should have to wait weeks or months to rectify through a constitutionally inadequate hearing before an immigration judge. Mr. Castillo was held in filthy, overcrowded, and unbearably hot conditions in a Manhattan holding cell for two and a half days—conditions so alarming he was quoted describing them in The New York Times—then confined in an unlicensed New Jersey detention center which recently saw unrest over squalid conditions and lack of regular food. On information and belief, he is now being transferred to yet a third detention center far from counsel or family, because of protests that broke out at his second detention center.

Confinement in those conditions poses a constitutional problem for anyone. But for a New Yorker like Mr. Castillo, who enjoys robust due process rights and whose entire detention was predicated on a mistake, it is intolerable. Mr. Castillo asks the Court to order his immediate release, so that he can return home and put an end to this Kafkaesque nightmare for himself and his family.

FACTUAL BACKGROUND

Respondents concede the core fact in this case: Petitioner has been present in the U.S. for over two years and cannot be subject to expedited removal. Caballero Decl. (ECF 10) at ¶ 14. They also concede that their erroneous belief that he *was* amenable to expedited removal was the sole basis for his redetention at a Manhattan immigration court on June 4. Caballero Decl. at ¶ 8. Although Respondents do not reference the repeated assertions of Mr. Castillo and an attorney present as he was detained that he was not amenable to expedited removal, *cf.* Levenson at ¶ 13-15 (describing pleading with officers and offering evidence of Mr. Castillo's presence for over two years), they do concede that during processing Mr. Castillo "stated that he had unlawfully entered the United States by crossing the border in Texas on June 1, 2022." Caballero Decl. at ¶ 10. Mr. Castillo has shared with counsel that even after he was processed, he continued to tell officers he had been present over two years—but they all professed no authority to redetermine his custody. Levenson Supp. Decl. at ¶ 5-6 ("at least one ICE officer told him that he should not have been subjected to expedited removal but that because the judge dismissed his case, there was nothing they could do. He also told me that an ICE officer even gave him his own phone and said he should call a lawyer to try to fix his situation.")

Respondents also agree that Mr. Castillo spent 2.5 days in a holding cell at 26 Federal Plaza. Caballero Decl. at ¶ 11. Mr. Castillo described the overcrowded conditions of confinement in that holding cell, in which hundreds of people were so crammed that it was not possible to lie down to sleep, to The New York Times. Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears,* N.Y. Times, June 12, 2025 (attached as Exh. A to Levenson Supp. Decl.); *see also* Levenson Supp. Decl. at ¶ 8-10 (200 people were held in an area meant for 60; there was no space to sleep, so some people attempted to sleep sitting up or slept in the bathrooms; and the

holding area was extremely hot). After that, he was transferred to Delaney Hall in New Jersey, an unlicensed facility that has been the subject of protests over conditions. When he arrived, the facility was so crowded that detainees did not have beds and he slept on the floor. Tracy Tully, *Four Men Escape*, N.Y. Times, June 13, 2025 (attached as Exh. B to Levenson Supp. Decl.); Levenson Supp. Decl. at ¶ 11. On June 12, protests broke out there due to the poor quality and irregular provision of food, with meals sometimes containing expired milk or not arriving until late at night. *Id.* The next day, he and others at the facility learned that all detainees will now be transferred to other facilities outside the region. Levenson Supp. Decl. at ¶ 13.

In short, Petitioner is confined in horrifying and inhumane conditions and has been for nine days because Respondents failed to accord him any process on June 4, 2025 or afterwards and as a direct result made a mistake in assessing his custody status. Had it not been for the intervention of his immigration counsel, and likely the filing of the instant petition, it is unclear he would even be in the U.S. right now. Although Respondents state they have now canceled his unlawful expedited removal order, they have still not reevaluated his custody, despite his initial protestations and his immigration counsel's subsequent provision of proof of his presence in the U.S. since June 2022. Respondents aver that they attempted to conduct a custody redetermination on June 12, 2025 (they day their answering papers were due), but that it was postponed due to reported unrest at the Delaney Hall facility. Caballero Decl. at ¶ 19. Respondents add that they planned to attempt this again on June 13, although the facility now appears to be on lockdown without access to any calls or visits, Exh. B to Levenson Supp Decl., and Mr. Castillo has been informed he will instead be transferred over a thousand miles away to another facility. Levenson Supp. Decl. at ¶ 13.

Petitioner makes one final note as to facts. As they have done in other cases, Respondents attempt to elide the custody determination process inherent in any release decision by DHS by claiming that Mr. Castillo's release in January 2025 was due to "lack of bedspace." Caballero at ¶ 5. Whatever its bedspace, DHS makes custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("Defendants do not dispute, that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"). In releasing Mr. Castillo in January 2025, Respondents necessarily conducted that analysis and determined Mr. Castillo posed neither a danger or a flight risk.[1]

ARGUMENT

I. Mr. Castillo's Detention Violates His Right to Substantive Due Process.

By Respondents' own admission, Mr. Castillo's detention is predicated on a mistake. *Compare* Caballero Decl. at ¶ 8 *with* Caballero Decl. at ¶ 14. His confinement violates his right to substantive due process and requires immediate release. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the

[1] Although Petitioner's counsel has not yet obtained the transcript, this distinction was the subject of extensive discussion before Judge Daniels on June 12, 2025, with the Court there categorically rejecting a similar contention that the prior release of the petitioner in that case was due to "bedspace" and not a determination as to flight risk and danger. *Valdez v. Joyce*, 1:25-cv-04627-GBD (SDNY June 12, 2025) (oral argument). Petitioner further notes that Respondents' own documentation in Mr. Castillo's case, including the Form I-213 generated in January 2025, undoubtedly reflects that this inquiry and other necessary background checks were performed. But Respondents have not filed that document and Petitioner cannot access it without a FOIA request.

liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

Civil immigration detention is authorized by statute, Respondents' Opposition ("Res.") at 8, but that authorization does not free detention from the constricts of the Constitution. *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024); *Velasco Lopez*, 978 F.3d at 850; *Zadvydas,* 533 U.S. at 690. That detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 854. In the absence of any evidence for either of those purposes, detention violates the substantive due process right to be free from purposeless confinement. *Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him"); *Padilla v. U.S. Immigr. & Customs Enf't,* 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (finding plaintiffs subject to mandatory detention had sufficiently alleged that their detention without bond hearings violated their substantive due process rights); *see also Martinez v. McAleenan*, 385 F. Supp. 3d 349, 368 (S.D.N.Y. 2019) (four-month confinement following defective notice of reinstatement, cured only after petitioner filed an order to show cause in a habeas case, violated his right to substantive due process).

Respondents found that Mr. Castillo posed no risk of flight or danger just six months ago and released him; nowhere do Respondents now contend there is any basis to alter that assessment. Caballero Decl. at ¶ 5, 7. Their actions in detaining him, moreover, were shocking.

From the moment Respondents began their efforts to dismiss his proceedings and detain him, on June 4, Mr. Castillo clearly and repeatedly stated he had been in the U.S. more than two years—indeed, he has been married to his U.S.-citizen wife for two years, a marriage that took place in the Bronx. He offered his New York State driver's license, issued in September 2022, to Respondents and an attorney "pleaded" with agents detaining him. Levenson Decl. at ¶ 13-15. He repeated his claim during processing, Caballero Decl. at ¶ 10, and again in detention. Levenson Supp. Decl. at ¶ 5-6 (describing Mr. Caballero's assertions to numerous ICE officers that he was present over two years and their claims that "there was nothing they could do"). Yet Mr. Castillo was handcuffed in front of his father-in-law and has been detained in sweltering, overcrowded conditions based solely on that baseless, erroneous contention that he was "amenable to expedited removal proceedings under INA § 235, 8 U.S.C. § 1225." Caballero Decl. at ¶ 8. He was not. The lack of any purpose to his detention renders it unlawful. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger). Mr. Castillo seeks his immediate release.

II. Petitioner's Sudden Redetention Ran Afoul of His Right to Procedural Due Process.

Mr. Castillo's confinement also violates his right to procedural due process. Respondents have not contended that Mr. Castillo was offered any process whatsoever before he was suddenly handcuffed and placed back into detention, despite DHS's custody assessment releasing him six months before. To the contrary, the agents with whom he spoke professed no authority to address his custody status or expedited removal order. Levenson Supp. Decl. at ¶ 6; Levenson Decl. at ¶ 13-15; Caballero at ¶. Respondents do not contend that he was given any information on how to contest his custody determination or expedited removal order, nor was he told who did have the

authority to address his unlawful confinement. Such lack of notice and opportunity to be heard prior to unlawful detention are baldly unconstitutional.

"Procedural due process rules are meant to protect against the mistaken or unjustified deprivation of life, liberty, or property." *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367 (2025) (cleaned up). The Second Circuit has repeatedly held that the well-known test for constitutionality of process set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), is applicable to due-process challenges to detention. *See Black*, 103 F.4th at 147; *Velasco Lopez*, 978 F.3d at 851; *e..g. McAleenan*, 385 F. Supp. 3d at 363. That test reveals the constitutional inadequacy of Respondents' actions.

As to the first prong of that test, Mr. Valdez invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). From living in New York City with his U.S.-citizen wife, putting his seven-year-old stepson to bed each night, and sharing in the day-to-day labor of their household, Ortiz Decl. at ¶ 9-13, he was handcuffed, detained, placed into an overcrowded holding cell and ultimately transferred to an unlicensed facility in New Jersey at which he has not received regular meals. Exh. B to Levenson Supp. Decl. (describing conditions at Delaney). As another district court explained in a class-action case challenging re-detention by ICE, the liberty interest when a person is re-detained in the community is "not the same as when someone is caught coming across the border and detained in the nearest facility." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). It is greater, because petitioners like Mr. Castillo are "taken away from their families, their schools, and their communities, often to be shipped across the country to a high-security institution and held for an indefinite period." *Id.*

Next, the risk of erroneous deprivation of liberty is enormous. *Black*, 103 F.4th at152 (for the second prong of *Mathews*, "[t]he only interest to be considered . . . is that of the detained individuals—not the government."). Respondents do not claim that *any* individualized custody assessment was made in Mr. Castillo's case when he was detained. *Cf. Lopez v. Sessions*, No. 18-CV-4189, 2018 WL 2932726 (S.D.N.Y. June 12, 2018) (finding a due process violation when the petitioner was redetained by immigration authorities with no "deliberative process"). Nor do they contend that such a process has occurred now, a week and a half after he was placed into hellish confinement conditions, although they aver to a hope it may occur soon. Respondents also do not Respondents contend that Mr. Castillo was provided any notice, explanation, or opportunity to contest this determination. He was not. Levenson Decl. at ¶ 15 ("The ICE officers said it was out of their hands and detained Mr. Castillo Lachapel"); Levenson Supp. Decl. at ¶ 6 (officers told him "there was nothing they could do").

As a result of this lack of process, Mr. Castillo was detained on erroneous pretenses despite absolutely no indication that he poses either a danger or a flight risk. He has no effective means to challenge this. Respondents suggest he should seek a bond hearing in immigration court. But he is not scheduled for a hearing in immigration court for two and a half weeks, during which time he will remain detained—and even that hearing is now likely to change if he is again moved. Caballero Decl. at ¶ 17; Levenson Supp. Decl. at ¶ 13. *Cf. Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (finding a bond hearing after detention insufficient process and noting respondents "misapprehend the purpose of a pre-detention hearing: if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"). Mr. Castillo would then also bear the burden of proof to justify his release, rather than Respondents bearing the proof to show that there are changed circumstances or that he poses either a danger

or flight risk. *See In Re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999) ("to be eligible for bond, the respondent must demonstrate that his "release would not pose a danger to property or persons, and that (he) is likely to appear for any future proceeding") (quoting 8 C.F.R. § 236.1(c)(8)). *See infra* at III (discussing the constitutional inadequacy of bond hearings).

Finally, the public interest compels additional process. Respondents have no interest in detaining individuals who pose neither a danger nor a flight risk. *See Velasco Lopez*, 978 F.3d at 854. Nor is their practice of suddenly and without notice or process disappearing noncitizens like Mr. Castillo into detention, with no means of locating or contacting them for days or weeks, Levenson Decl. at ¶ 7, commensurate with lawful behavior.[2] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). At a minimum, when inflicting such an enormous loss, Respondents must provide more process than what was accorded here—which was absolutely none.

The proper remedy is release. In case after case finding ICE redetained a previously released individual in violation of their right to due process, district courts have recognized that post-hoc process is inadequate and ordered release. *McAleenan*, 385 F. Supp. 3d at 365; *Lopez v. Sessions*, 2018 WL 2932726, at *7; *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *2 (W.D.N.Y. May 2, 2025). As a district court in the Western District explained last month:

> [H]ow can we pride ourselves on being a nation of laws if we are not willing to extend that most fundamental right to all—if we are not at least willing to ask, before we lock you up, do you have anything to say? The answer is simple: due process. Everyone—citizen and noncitizen, the innocent and the guilty—is entitled to that sacred right. [Petitioner] did not get that here.

---

[2] This experience is not aberrational. *See, e.g.*, *Ramirez Lopez v. Trump*, 1:25-cv-04826-JAV (S.D.N.Y. June 10, 2025) (ECF 9) (describing inability to locate petitioner or schedule a legal call for 10 days after detention).

Ceesay, 2025 WL 1284720, at *20–21. For that reason, the court added, it would order petitioner's immediate release. Mr. Castillo asks that this Court to do the same.

III. Prudential Exhaustion Is Inappropriate.

Respondents urge the Court to sidestep the significant constitutional issues in this case by imposing a prudential exhaustion requirement, Res. at 11, and insisting that Mr. Castillo remain in unlawful confinement until an administrative hearing at which he will bear the burden to show he merits release. Their suggestion that habeas relief is essentially unavailable despite the gravity of the constitutional violations here, potentially for months, cannot pass muster.

Exhaustion is not required, as Respondents concede, and the doctrine of prudential exhaustion contains several exceptions. Overarching all of these is an exception where requiring exhaustion would impose a "manifest injustice." *Gill v. I.N.S.*, 420 F.3d 82, 87–88 (2d Cir. 2005); *Marrero Pichardo v. Ashcroft*, 374 F.3d 46, 53 (2d Cir. 2004). Exhaustion also need not apply when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (citations omitted). Several of those exceptions apply here.

First, Mr. Castillo has raised a substantial constitutional question: namely, whether his detention on erroneous pretenses violated his right to due process ab initio. *See supra* at I-II. A bond hearing, which is by definition post-deprivation process, does not redress this. *See Jorge M.F*, 534 F. Supp. 3d at 1055. In another recent due-process challenge to detention, the district court rejected Respondents' argument that the petitioner should first exhaust the administrative bond process, writing:

> There are serious questions about whether that process would be an adequate substitute for the writ of habeas corpus in district court, given the limited scope of administrative review... Consider that the government's argument on this issue boils down to a bold statement that no matter how egregious the type or quantity of First Amendment or due process violations committed by the government in detaining an individual, an Article III court *cannot* consider any alleged constitutional violations until after Article II employees, with no power to consider or address those violations, have moved the case through their lengthy process. Put another way, the government argues that § 1226(a) grants practically limitless, unreviewable power to detain individuals for weeks or months, even if the detention is patently unconstitutional.

Ozturk v. Trump, No. 2:25-CV-374, 2025 WL 1145250, at *14–15 (D. Vt. Apr. 18, 2025), *amended on other grounds sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). The same concerns counsel against a prudential exhaustion requirement here.

Moreover, the administrative process here will necessarily and indisputably be constitutionally inadequate under Second Circuit law. Since Mr. Castillo filed his petition, the basis for his custody has changed at least twice—first from 8 U.S.C. § 1225(b)(1)(A), when he was the subject of an unlawful expedited removal order issued on June 6 (the date of filing of the instant petition), to *no* statutory basis, while he awaited Respondents' bumbling attempts to correctly file a Notice to Appear, Caballero Decl. at ¶ 13-15, to now 8 U.S.C. § 1226(a), Res. at 11 ("his detention is governed by 8 U.S.C. § 1226(a)"). Now that the merry-go-round has evidently ceased spinning, his custody may be subject to administrative review at a hearing in which he bears the burden of proof. *See infra* at II (*citing In Re Adeniji*). The Second Circuit has already found such a burden allocation to violate the due process rights of people facing *initial* confinement, *Velasco Lopez*, 978 F.3d at 856–57, whose claims are if anything weaker than that of Mr. Castillo. Accordingly, "courts in this District routinely excuse noncitizens' failure to exhaust administrative remedies when noncitizens challenge the burden allocation at a Section 1226(a) bond hearing." *J.C.G. v. Genalo,* No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *5

(S.D.N.Y. Jan. 14, 2025). Mr. Castillo was not detained pursuant to 8 U.S.C. § 1226(a) at the time he filed his petition, but he has alleged a violation of his right to due process which directly implicates the procedures afforded in a post-deprivation administrative custody procedure.

Mr. Castillo also faces irreparable injury and manifest injustice as a result of his continued unlawful detention. Although courts have typically not deemed continued custody alone an irreparable injury, that analysis changes in the face of additional circumstances rendering custody unjust and harmful. *See, e.g., Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 3889800, at *4 (S.D.N.Y. Aug. 19, 2019). Several such circumstances exist in this case. First, Mr. Castillo's redetention was unlawful ab initio, because it was predicated on a factual and legal error. *See infra* at I-II. For the Court to sanction its continuation inflicts harm not only on Mr. Castillo but on the enormous number of people who may suffer the same fate and be wrongly detained due to inadequate procedures, only for Respondents to throw up their hands and await administrative proceedings.[3] *See* Exh. A to Levenson Supp. Decl. (describing Respondents' courthouse detention policy).

Second, Mr. Castillo is being subjected to uniquely harmful detention conditions, including two and a half days in a hot holding cell too crowded for people to lie down; a week in an unlicensed facility that initially did not have beds and which served such repulsive and inadequate food that Mr. Castillo and others were preparing a petition in protest; and now another facility, to be determined, as a result of unrest at the second facility. Levenson Supp. Decl. at ¶ 12-13.

[3] Many people may not have even that. The Board of Immigration Appeals recently held that entrants without inspection apprehended shortly after entry have no right to a bond hearing, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which renders a large number of previously bond-eligible individuals now ostensibly ineligible.

In these circumstances, Petitioner respectfully submits that the imposition of a prudential exhaustion requirement is unnecessary and inappropriate.

IV. This Case is Not Moot Because Mr. Valdez Remains Unlawfully Detained.

Respondents seek dismissal on mootness grounds, evidently hoping to avoid judicial scrutiny of their decision to unlawfully detain Petitioner and the administrative machinations that precipitated it. But their arguments fail for three reasons. The first reason is obvious: Petitioner is *still* detained. Second, his detention has imposed significant collateral consequences that this Court can remedy. Finally, Respondents' supposed resolution of Petitioner's detention through a forthcoming administrative review process is a smokescreen: instead of immediate and unconditional release, all Respondents offer is the promise that Petitioner *may* receive a custody redetermination by the same agency that, by their own admission, erroneously detained him and sought to fast-track his deportation. Such promises, coupled with Respondents' conduct throughout Petitioner's re-detention fiasco, falls squarely within the voluntary cessation exception to mootness doctrine.

First, it is black letter law that a habeas petition is not moot so long as the petitioner remains detained or in custody. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); Caballero Decl. at ¶ 20 ("Mr. Castillo Lachapel is currently detained.") Absent his immediate release, Respondents promise to conduct a custody redetermination is nothing more than a promise to consider—not effectuate—Petitioner's release.

Second, the Petitioner's detention has caused clear and detrimental "collateral consequences" that constitute "concrete and continuing injury." *Spencer*, 523 U.S. at 7. More than a week ago, Petitioner could freely develop his asylum claim and any other defenses to removal. Now and for the foreseeable future, he has been relegated to trying to defend himself in

his reconstituted immigration court proceedings from inside a detention center, significantly hampering his ability to gather evidence and consult with counsel. *See* Ingrid Eagly & Steven Shafer, *Detained Immigration Courts*, 110 Va. L. Rev. 691, 745 (2024) (studying the structural challenges facing noncitizens in detained immigration proceedings, including higher deportation rates, "increased government control over court assignment," along with limited access to counsel, sped-up case timelines, remote geography, and depressed public access to courts."). Respondents' release analysis, meanwhile, will place the burden on Mr. Castillo. *See supra* at II.

Finally, Respondents' admissions about the actions they took to detain Petitioner fall well within the "voluntary cessation" exception for mootness. It "is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up). The government may overcome the exception and demonstrate mootness by showing that "(1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *MHANY Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016).

Respondents cannot satisfy either requirement. Res. at 5-7. For reasons stated earlier, Respondents have not actually "ceased" their unlawful activity because they continue to hold Mr. Castillo in detention. As long as he is detained, no "interim relief"—such as a custody review—can irrevocably eradicate the effects of his sudden redetention.

Moreover, even if Respondents did voluntarily release Mr. Castillo, which they should, there would remain a reasonable possibility that he could be erroneously redetained in the future. Respondents canceled Mr. Castillo's expedited order days ago—yet he remains detained, without

even a custody evaluation. Caballero Decl. at ¶ 13. The chaos and disregard for the importance of due process characterizing the entire process of his detention and confinement since June 4 do not inspire confidence that this conduct will not recur the next time that Mr. Castillo enters an immigration courtroom. Indeed, Respondents have declined to disavow their policy of pursuing en masse dismissals in favor of expedited removal—a practice that, as Mr. Castillo's case highlights, invites precisely the type of due process violations that warrant this Court's intervention.

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to order his immediate release from custody.

Dated: June 13, 2025

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

CERTIFICATE OF SERVICE

I, Paige Austin, certify that on June 13, 2025, electronically filed the attached the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus and 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/ Paige Austin
Paige Austin
Make the Road New York
301 Grove St.
Brooklyn, NY
Tel.: (718) 718-7690