

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Meysam Khabazha

*Petitioner,*

v.

No. 25-cv-5279 (JMF)

Paul ARTETA, Warden, Orange County Jail;  
LaDeon FRANCIS, in his official capacity as  
Acting Director of the New York Field Office  
of United States Immigration and Customs  
Enforcement; Pamela BONDI, in her official  
capacity as Attorney General; Kristi NOEM,  
in her official capacity as the Secretary of the  
United States Department of Homeland  
Security,

*Respondents.*

**PETITIONER'S REPLY MEMORANDUM OF LAW  
IN SUPPORT OF SECOND AMENDED PETITION**

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## INTRODUCTION

Respondents make much of the “individualized” nature of their decision to send masked men to Petitioner Meysam Khabazha’s home and force him into a car then jail him, despite his prior release on his own recognizance; his full compliance with immigration authorities for years; his pending meritorious asylum claim; and his lack of criminal history. But nowhere do Respondents claim they had any viable *reason* to take these actions. Nowhere do they assert individualized changed circumstances such that Mr. Khabazha poses a danger or a flight risk. Nor do they offer any refutation of Mr. Khabazha’s claim that his detention was part of a politicized campaign to round up Iranian nationals, irrespective of their individual circumstances. Instead, they suggest first that this Court cannot reach his claim at all and then in the alternative that the “individualized” nature of their flagrantly lawless decision-making discharges any duties owed under the Constitution and, whatever the violation, it was remedied by the availability of an administrative bond hearing weeks later. But Mr. Khabazha’s case proves the lie to that claim. He had a bond hearing—but it was quickly rendered a legal nullity when the immigration judge belatedly adopted Respondents’ own argument, that individuals in Mr. Khabazha’s position are ineligible for bond, and revoked his bond. Indeed, he is free from jail today only due to an agreement brokered 15 minutes before a hearing before this Court. That haphazard and post-deprivation process, such as it was, does not vindicate Mr. Khabazha’s right to due process.

Nor is Mr. Khabazha’s claim moot. He remains in custody for habeas purposes under black-letter Supreme Court law and he continues to suffer actual and direct injury: the new conditions imposed on him as a result of his unlawful detention, including constant GPS monitoring, are causing him physical pain and preventing his return to regular employment and

normalcy. That injury forecloses Respondents’ efforts to keep this Court from reviewing their actions and ordering Mr. Khabazha’s unconditional release on the same terms as existed before.

## ARGUMENT

### I. Mr. Khabazha’s Case Is Not Moot and This Court Retains Jurisdiction to Rule on His Claims.

#### A. Petitioner Remains in Custody for Habeas Purposes

Respondents dispute that Mr. Khabazha remains in custody for purposes of habeas jurisdiction by pointing to an entirely unrelated discussion in *Jennings v. Rodriguez*, 583 U.S. 281, 307-308 (2018). There, the Supreme Court analyzed the mandatory-detention provisions at 8 U.S.C. § 1225(b) and § 1226(c)—neither of which Respondents contend is applicable here—and concluded that both mandate noncitizens remain detained throughout their removal proceedings. *Id.* Its discussion construed “the meaning of the term ‘detain’ in the relevant statutory provisions,” namely 1225(b) and 1226(c), and looked to the myriad issues that would arise if noncitizens were to remain legally “detained” under those provisions even after released from custody. *Res.* at 7. (citing *id.* at 308-309).

The problem with Respondents’ argument is that it pertains to the wrong statute. Nowhere in *Jennings* did the Supreme Court address much less overrule its distinct construction of the federal habeas statutes, 28 U.S.C. § 2241(c), over more than half a century of precedential decision making. *Cf. Rumsfeld v. Padilla*, 542 U.S. 426, n. 10 (2004) (collecting “landmark cases addressing the meaning of ‘in custody’ under the habeas statute” since at least 1958). Habeas relief is a time-honored and carefully protected right, *Boumediene v. Bush*, 553 U.S. 723, 743–45 (2008) (discussing history of the great writ), and its use cannot be so dramatically curtailed

merely by implication. *See Gamble v. United States*, 587 U.S. 678, 691 (2019) (emphasizing that “a departure from precedent demands special justification”) (cleaned up).

Rather, the Supreme Court and Second Circuit holdings that to meet the custody requirement under the habeas statute, a petitioner “must be subject to restraints ‘not shared by the public generally,’” remain applicable. *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 351–53 (1973) (quoting *Jones v. Cunningham*, 371 U.S. 236, 240 (1962)); *see also Ragbir v. Homan*, 923 F.3d 53, 76 (2d Cir. 2019) (finding immigration petitioner in custody for habeas purposes based on restraints on liberty), *cert. granted, judgment vacated sub nom. Pham v. Ragbir*, 141 S. Ct. 227, 208 L. Ed. 2d 1 (2020)<sup>1</sup>; *see, e.g., Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (“An alien challenging the conditions of his immigration OSUP also may be in custody for habeas purposes”). That long-standing holding from the Supreme Court remains precedential and continues to govern habeas cases after *Jennings*. *See, e.g., Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516, at \*5 (D. Mass. June 11, 2025); *Orellana Juarez v. Moniz*, No. 25-CV-11266-MJJ, 2025 WL 1698600, at \*4 (D. Mass. June 11, 2025); *Ortega Campoverde v. Warden York Cnty. Prison*, No. 20-1787, 2021 WL 2879505, at \*3 (3d Cir. July 9, 2021) (finding immigration petitioner is in custody because “he is subject to the conditions of his bond, which he claims were imposed in violation of the Constitution and the INA”); *S.R. v. Al Cannon*, No. 2:19-CV-482-DCN-MGB, 2019 WL 13262645, at \*4 (D.S.C. Apr. 19, 2019) (immigration petitioners remain in custody due to reporting requirements).

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<sup>1</sup> Although the decision in *Ragbir* was vacated by the Supreme Court in a non-merits decision, its holding remains persuasive authority. *See Brown v. Kelly*, 609 F.3d 467, 477 (2d Cir. 2010); *see also Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at \*6–7 (S.D.N.Y. May 23, 2018) (discussing the continued persuasive weight of vacated Second Circuit decisions).



Because Mr. Khabazha is undisputedly subject to severe curtailments on his liberty, *see* Exh. C-E to Love Decl. (ECF 20) (detailing supervision requirements including GPS monitoring), he remains in custody for purposes of habeas jurisdiction notwithstanding his release.

### **B. Petitioner's Claim Is Not Moot.**

Because he remains in custody for purposes of habeas jurisdiction and has challenged the conditions of his release, Mr. Khabazha's claim is not moot. The authority that Respondents cite in claiming otherwise is inapposite. Res. at 7-8. The petitions Respondents point to by way of comparison were dismissed as moot because the petitioners had subsequently won their case in immigration court<sup>2</sup>, obtained all the relief they pled for<sup>3</sup>, or only challenged harms stemming

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<sup>2</sup> *Edwards v. Ashcroft*, 126 F. App'x 4, 4-5 (2d Cir. 2005) (petitioner only challenged certain aspects of detention and won 212(c) relief); *Soorsattie v. Shanahan*, No. 15 Civ. 7595 (JGK), 2015 WL 6742334, at \*1 (S.D.N.Y. Nov. 3, 2015) (petitioner released following grant of cancellation of removal and government agreed not to appeal); *German v. Green*, No. 15 Civ. 4691 (WHP), 2015 WL 7184992 (S.D.N.Y. Oct. 30, 2015) (petitioner released following termination of removal proceedings).

<sup>3</sup> *Brea v. Mechkowski*, 156 F. Supp. 3d 423, 424 (S.D.N.Y. 2016) (petitioner released on bond only asked for release or a bond hearing); *Pierrilus v. U.S. Immigration and Customs Enforcement*, 293 F. App'x 78 (2d Cir. 2008) (petitioner only challenged length of detention); *Remy v. Chadbourne*, 184 F. App'x 79, 80 (2d Cir. 2006) (petitioner only requested release and joined the government in seeking dismissal); *Samuda v. Decker*, No. 17 Civ. 9919 (VEC), ECF No. 13 (S.D.N.Y. Mar. 28, 2018) (petitioner's release on humanitarian parole mooted her request for release "under parole, bond, or reasonable conditions of supervision"); *Osias v. Decker*, No. 17 Civ. 2786 (VEC), 2017 WL 3432685 (S.D.N.Y. Aug. 9, 2017) (petitioner released on ICE bond only requested an individualized bond hearing); *Rauf v. Shanahan*, No. 11 Civ. 7755 (JGK), 2012 WL 1864312, at \*1 (S.D.N.Y. May 21, 2012) (petitioner only sought release and failed to respond to subsequent court order); *Karamoke v. U.S. Homeland Sec.*, No. 09 Civ. 4089 (GBD) (JCF), 2009 WL 2575886, at \*4 (S.D.N.Y. Aug. 20, 2009) (post-order petitioner released on order of supervision only challenged detention); *Watson v. Orsino*, No. 13 Civ. 1631 (LGS), 2013 WL 4780033, at \*1 (S.D.N.Y. May 31, 2013) (post-order petitioner released pursuant to an order of supervision only asked for release and failed to file a reply); *Abzerazzak v. Feeley*, No. 21-CV-06443-FPG, 2022 WL 170404, at \*2 (W.D.N.Y. Jan. 18, 2022) ("even liberally construing the Petition, the relief sought by Petitioner was immediate release from custody"); *Masoud v. Filip*, No. 08 Civ. 6345 (CJS) (VEB), 2009 WL 223006, at \*6 (W.D.N.Y. Jan. 27,



from a final order of removal.<sup>4</sup> Others stand for the still less disputed notion that deportation moots a detention challenge.<sup>5</sup>

None of these cases present factual circumstances similar to the instant case. Mr. Khabazha's removal proceedings continue, and he has detailed ongoing severe curtailments to his liberty, including GPS monitoring, that were not imposed prior to and that resulted directly from his unlawful confinement. *See* Love Decl. at § 5 (ECF No. 20) (those conditions were imposed upon his release from custody). These are an "actual injury," akin to "the restriction imposed by the terms of the parole" that renders a habeas challenge to a conviction live in the criminal context even after release. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see, e.g., Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 492 (S.D.N.Y. 2018) (citing *Spencer* in an immigration habeas petition and concluding that Article III standing requires either actual injury or collateral consequences).

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2009) ("the only relief Masoud sought from this Court was release from DHS custody, his habeas petition became moot upon his release").

<sup>4</sup> *Leybinsky v. U.S. Immigration and Customs Enforcement*, 553 F. App'x 108, 109 (2d Cir. 2014) (post-order petitioner, who was only detained following violation of conditions or new criminal arrest, only sought protection against re-detention, which would be a consequence of his final order of removal, not his most recent detention); *Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 491-493 (S.D.N.Y. 2018) (post-order petitioner released without any conditions and cancellation of plans for removal, based on credible evidence of U.S. citizenship, only sought protection against re-detention, but such future harm would only stem from final removal order); *Chocho v. Shanahan*, 308 F. Supp. 3d 772, 774-775 (S.D.N.Y. 2018) (post-order petitioner only asked for release or a bond hearing and any threat of re-detention based on a denial of his U-Visa petition stemmed from his final removal order). It is relevant here to note that an "Order of Supervision," is a legal term of art that refers to people with administratively final orders of removal, as opposed to all people subject to conditions monitored by the Department of Homeland Security. *See* 8 U.S.C. § 1231(a)(3), 8 C.F.R. § 241.5(a).

<sup>5</sup> *Pena v. Lynch*, No. 16 Civ. 5075 (RA), 2017 WL 2799613, at \*347 (S.D.N.Y. June 26, 2017) (petitioner, who had only requested release, was deported); *Jackson v. Holder*, 893 F. Supp. 2d 629, 631 (S.D.N.Y. 2012) (petitioner only challenged length of detention and only ongoing injury stemmed from his deportation).

To be sure, Mr. Khabazha is *also* suffering serious collateral consequences to that unlawful detention (such as Respondents’ failure to return his employment authorization, which has led to his loss of employment since he filed the instant petition).<sup>6</sup> And to the extent the Court rejects the premise that the conditions imposed as a result of his unlawful redetention are direct injuries, such conditions are at a minimum a collateral consequence of that detention. *See Spencer*, 523 U.S. at 7 (defining collateral consequences of a conviction as “some concrete and continuing injury other than the now-ended incarceration or parole”). A collateral consequence, like an actual injury, creates a justiciable live controversy for the Court to resolve. *Id.*

Given that he is suffering an ongoing injury, and that he has sought *unconditional* release pursuant to the same terms that existed prior to his unlawful redetention in 2025 through his Second Amended Petition, Mr. Khabazha’s claims are not moot and this Court retains jurisdiction to grant him relief.

### **C. Mr. Khabazha’s Claims Are Not Barred by Section 1226(e)**

Respondents make much of their discretionary authority to detain and redetain anyone, for any reason or no reason at all. Resp. at 10-11. But as Respondents concede, there is no bar to Mr. Khabazha’s constitutional and legal challenges to his redetention. *Id.* at 11; *see Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) (§ 1226(e) does not bar review over constitutional claims or questions of law) (citing *Demore*, 538 U.S. at 517, *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020)).

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<sup>6</sup> DHS has failed to return Mr. Khabazha’s employment authorization and driver’s license, resulting in his loss of employment. Since ISAP also seized his passport, he has been left without any government-issued photo identification. Nystedt Supp. Decl. at ¶¶ 3-5.

## **II. Mr. Khabazha's Unlawful Redetention Violated His Constitutional Rights.**

Respondents use the words “individualized” and “discretionary” to justify their redetention of Mr. Khabazha, *see* Res. at 2-3, but the simple invocation of those words cannot conjure legality. Nowhere do Respondents claim that Mr. Khabazha was redetained because Respondents concluded he now poses a danger or a flight risk. Discretion provides no cover. Detention—and certainly redetention, in the face of a prior release determination—cannot be divorced from its sole lawful purposes. *See* Memo. in Support of Second Amended Pet’n. (Pet. Memo.) at 8-10. Nor does a bond hearing now rendered a legal nullity provide Mr. Khabazha all the process to which he is entitled. He is at liberty today due to the instant habeas petition, and a resulting promise from ICE brokered minutes before a hearing on his motion for a temporary restraining order. *See* July 17, 2025 Transcript at \*3 (ECF No. 19-4). Although that was certainly lucky, such haphazard, opaque, and post-deprivation machinations on the part of Respondents do not provide adequate process.

### **A. His Detention Violated His Right to Due Process.**

Respondents cast Mr. Khabazha’s redetention by agents who came to his home as a simple redetermination of custody, pursuant to an “individualized assessment,” Res. at 13. But this is belied by the facts. Respondents have provided no information on what that assessment considered, other than that he was “amenable to immigration enforcement”, nor any conclusion that Mr. Khabazha now posed either a flight risk or a danger. Kubicz Decl. at ¶ 6 (stating only that ICE decided to take Mr. Khabazha back into custody) (ECF No. 21). And indeed, at his bond hearing, Respondents also did not proffer any evidence that Mr. Khabazha posed either. Nystedt Decl. at ¶ 12 (ECF No. 19-3). Petitioner, by contrast, has provided credible evidence that the decision to redetain him turned solely on his nationality. Second Am. Pet’n at ¶¶ 41-46; Exh.



F to Nystedt Decl. (articles regarding detention campaign targeting Iranians). Detention without legitimate purpose, and certainly for improper purpose, is violative of the due process clause. *E.g. Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at \*11 (D. Vt. Apr. 30, 2025); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at \*5 (D. Minn. June 17, 2025) (“At its foundation, due process prohibits detaining an individual without justification. Petitioner has established, and the Government has not sufficiently rebutted, that his detention is rooted in improper purposes and lacks an individualized legal justification.”).

Respondents next attempt to minimize the immense due process problem inherent in Respondents’ baseless redetention by pointing to the possible implications for others. Res. at 16. This fear of “too much justice” notwithstanding, Mr. Khabazha has made out a serious violation of his due process and like numerous other habeas judges in this circuit and others, the Court should order his complete and unconditional release. *See Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at \*3 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at \*4 (S.D.N.Y. June 18, 2025); *Lopez Benitez v. Franco*, 1:25-cv-05937-DEH, ECF No. 14 at 31 (S.D.N.Y. Aug. 8, 2025); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at \*10 (E.D. Cal. July 11, 2025).

Mr. Khabazha’s prior release from detention in 2022 is not merely incidental to his claim, Res. at 16, it is crucial to the *Mathews* analysis at each stage. His release and development of community ties in New York City over nearly three years heighten his liberty interest. *See* Pet. Memo. at 11-12 (ECF 19-1); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at \*2 (N.D. Cal. July 4, 2025) (collecting cases); *Singh*, 2025 WL 1918679, at \*6 (describing liberty interest). His prior release heightens the likelihood of error when he was redetained with literally no stated basis. Respondents attempt to elide the determination that went into Mr.



Khabazha's release in 2022—chalking it up merely to bedspace and medical needs—but those ancillary factors are irrelevant. Respondents necessarily determined Mr. Khabazha posed neither a danger or a flight risk in 2022. 8 C.F.R. § 1236.1(c)(8); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”).

Respondents do not contend that they had any basis to revisit that earlier determination in 2025. *See Lopez Benitez v. Franco*, 1:25-cv-05937-DEH, ECF No. 14 at 25-26 (finding that “[g]iven the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents’ failure to show a significant interest in [his] detention,” the Court concludes that “Respondents’ ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights”) (citing *Valdez*, 2025 WL 1707737, at \*4). Instead, they assert that the bond hearing which occurred two weeks after Mr. Khabazha’s unlawful redetention, resulting in a now-vacated bond order, provided sufficient process. Res. at 16. But a process available only after Respondents violated the law—and after Mr. Khabazha spent weeks sitting in a jail cell—is insufficient. *See Chipantiza-Sisalema*, 2025 WL 1927931, at \*3 (“Such a hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause”) (quotations omitted); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (“These arguments 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.”)

Even if the administrative bond process were in theory sufficient, the bond hearing in his case is now a legal nullity. The order in which it resulted has been vacated. Exh. F to Love Decl.

(ECF No. 20-6). Although the vacatur was sua sponte, Respondents' hands are not clean: the bond order closely tracks Respondents' own diligent efforts to convince immigration judges that people in Mr. Khabazha's position are ineligible for bond, both in its conclusions and its timing. Second Am. Pet'n ¶ 13-14 (describing an expansion in whom DHS argues is ineligible for bond as of July 8, 2025).<sup>7</sup> Mr. Khabazha is not at Orange County Jail (or another detention facility) today solely due to an assurance offered in the context of the instant litigation, moments before a hearing on his motion for a temporary restraining order. *See* Ltr. to Court Dated July 17, 2025 (ECF No. 15). An agreement obtained in the shadow of an imminent hearing in federal court, after the sua sponte revocation of bond, is not regularized, transparent, nor sufficient process for purposes of the due-process clause.

Respondents also suggest that Mr. Khabazha can avail himself of a discretionary request to ICE to ameliorate his conditions of release. Res. at 17. But its claim merely underscores that agency determinations are a lawless black box. *See Velasco Lopez v. Decker*, 978 F.3d 842, 853 (2d Cir. 2020) ("After fifteen months, the Government had not found information sufficient to show that Velasco Lopez was a poor bail risk, and indeed, it was in possession of important information indicating the contrary.") Mr. Khabazha filed a written request with DHS, seeking among other relief to remove his GPS and attaching 20 pages of medical records, on July 28, 2025. *See* Exh. A to Nystedt Supp. Decl. Yet Respondents now claim that he has not provided

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<sup>7</sup> Since the instant litigation commenced, the U.S. Attorney's Office has also changed its position to comport with that of DHS and is now arguing in habeas litigation that petitioners in Mr. Khabazha's position are subject to mandatory detention and ineligible for bond. *See, e.g., Lopez Benitez v. Francis*, 1:25-cv-05937-DEH, ECF No. 8 (S.D.N.Y. July 24, 2025) (opposing petitioner's habeas and contending he is subject to mandatory detention as a noncitizen who has not been admitted to the U.S.); *Arraiz Perez v. Francis*, 1:25-cv-05786-KPF, ECF No. 8 (S.D.N.Y. July 23, 2025) (same).

any medical records to DHS, Res. at 17; Love Decl. at ¶ 13, suggesting his request was not given full review.

In short, the procedures to which Mr. Khabazha has been subject to date do not vindicate his due process rights under *Mathews* and, if anything, show the need for this Court's intercession and ruling. Pet. Memo. at 11-13 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019) ("As Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore Plaintiff is to immediate release him and enjoin the Government from further similar transgressions."))

#### **B. Mr. Khabazha's Redetention Violated the Fourth Amendment.**

Respondents suggest that the Fourth Amendment has no applicability outside the criminal context, Res. at 17-18, or in the alternative that it protects only against repeated seizures despite an immigration court-ordered bond. *Id.* at n. 9. It is wrong on both counts. First, it is inarguable that the Fourth Amendment protects noncitizens in the context of immigration enforcement. *E.g.* *Cotzoy v. Holder*, 725 F.3d 172, 179 (2d Cir. 2013) (finding a warrantless entry into petitioner's home by immigration agents violated the Fourth Amendment). Indeed, *Carlson v. Landon*—which addressed the propriety of detention on the basis of administrative warrants—was itself an immigration case, in which the Supreme Court found adherence to Fourth Amendment norms appropriate even in the context of civil immigration detention. 342 U.S. 524, 546 (1952).

Second, the permissibility of initial civil immigration detention based only on administrative warrants does not render the *repeated* use of such warrants to detain someone without any new basis or cause similarly permissible. Mr. Khabazha was detained in 2022 based



on his ostensible removability from the U.S. Exh. I (ECF No. 21-2) (authorizing detention because he is “within the country in violation of the immigration laws”); Exh. L (ECF No. 21-5) (authorizing detention because, as relevant to him, he “lacks immigration status”). In other words, he was detained both times for the same reason: he lacks status under the immigration laws, as he is still in the process of seeking asylum.<sup>8</sup> The issuance of a new Form I200 cannot mask the identical basis for the two detentions nor can it justify a new seizure. Were it otherwise, Mr. Khabazha and others like him could be continuously redetained throughout their removal proceedings, regardless of any prior bond or release determination. *Cf. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017) (“Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.”), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Finally, the distinction that Respondents propose between DHS- and immigration judge-issued bonds, *id.* at n. 9, has no basis in the statute or the Fourth Amendment. *See Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at \*8 (N.D. Okla. June 12, 2025)<sup>9</sup>. Respondents have conceded in litigation that redetention of individuals previously released pursuant to § 1226(a) requires a change in circumstances, *Saravia*, 280 F. Supp. 3d at 1196-1197; there is no statutory or constitutional reason for that to differ based on what administrative officer issued the § 1226(a) decision.

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<sup>8</sup> Notably, his continuing lack of status is due in part to Respondents’ delay. As noted in his petition, Mr. Khabazha was originally scheduled for a merits hearing in February 2025 but that hearing was sua sponte continued for over a year by the immigration court. Second Am. Pet’n at ¶ 17.

<sup>9</sup> Although Respondents cite this case to suggest there is no statutory requirement that redetention be justified through new cause, Res. at 18, the court there did not reach the constitutionality of such a detention.



## CONCLUSION

For the foregoing reasons, Mr. Khabazha asks the Court to grant a writ of habeas corpus in his case and order his unconditional release from Respondents' custody on the same terms as prior to his unlawful detention.

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New York, NY

Respectfully Submitted,

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## Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,259 words.