

Exceptional circumstances also exist here. While Respondents have produced an affidavit representing that Petitioner is able to obtain access to prescribed medication and is “psychiatrically stable,” it is undisputed that Wyatt is a detention facility and is not a psychiatric facility. Given the inherent trauma of incarceration on individuals without severe mental health diagnoses, Respondent cannot represent that Petitioner’s condition will remain stable or that prolonged further detention will not adversely affect his condition.

Further, the 8 USC 1226 a establishes a discretionary framework (“may detain” / “may release” on bond or conditional parole). The statute and regulations require DHS to make an individualized custody determination—considering danger and flight risk—*before* detaining a non-citizen. See *Lopez Benitez v. Francis*, 2025 WL 2371588, at * 10-12 (S.D.N.Y. Aug. 13, 2025) (ordering immediate release prior to bond hearing when record contained no evidence of individualized determination by DHS prior to detention) ; 8 C.F.R. § 1236.1(c)(8). Here, the record contains no evidence of who decided to detain Petitioner, when, on what basis, or whether any change in circumstances existed since his release—precisely the vacuum that led *Lopez* to find a due-process violation and order immediate release *Id.*, at *10–*13

The Chief Judge of this District has also ordered that Respondents must immediately release immigration detainees *prior* to their bond hearing upon demonstrating that they are properly detained if at all under 8 USC 1226 (a) See, eg., *JUAN TEJADA POLANCO, Petitioner, v. PATRICIA HYDE; MICHAEL NESSINGER; TODD LYONS; & KRISTI NOEM, Respondents.*

FREDDY QUIZHPI SIBRI, Petitione., No. 25-CV-552-JJM-AEM, 2025 WL 3033926, at *1 (D.R.I. Oct. 30, 2025). As Petitioner in this matter is similarly situated to those in *Polanco* and *Sibri*, with the additional factor of a serious mental health condition, a similar order is justified in this matter.

Conclusion

Petitioner respectfully requests that the Court order his immediately release on minimal conditions necessary to ensure appearance at a bond hearing.

Respectfully Submitted

Dated October 7th, 2025.

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CERTIFICATE OF SERVICE

I, Carl Hurvich, do hereby certify that on November 7 2025, the above document was served on the registered participants as identified on the Notice of Electronic Filing (NEF) through the electronic ECF system and paper copies will be sent to those indicated as non-registered participants.

Respectfully submitted,

/s/Carl Hurvich
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