

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

JOSE FLORES PALMA,
Petitioner,

v.

Civil Action No. 25-9340

PAUL ARTETA,
in his official capacity as Sheriff of Orange
County, New York and Warden of the
Orange County Correctional Facility;

LADEON FRANCIS,
in his official capacity as Acting Field
Office Director of New York, Immigration
and Customs Enforcement;

TODD M. LYONS,
in his official capacity as Acting Director,
United States Immigration and Customs
Enforcement;

KRISTI NOEM,
in her official capacity as Secretary, U.S.
Department of Homeland Security;

PAM BONDI,
in her official capacity as Attorney General,
U.S. Department of Justice;
Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Jose Flores Palma (“Petitioner” or “Mr. Flores”) petitions this Court for a writ of habeas corpus to remedy his unlawful arrest and detention by Respondents. Mr. Flores is an asylum seeker from El Salvador who came to the United States to find refuge for himself, his wife, and their two minor sons. He has done everything the U.S. government asked of him. He followed the Department of Homeland Security’s (“DHS”) process for asylum seekers to present

for an appointment at the border. He appeared as directed and DHS granted him parole to come into the United States. He applied for and was granted permission to work. He attended numerous appointments with Immigration and Customs Enforcement (“ICE”) and was even wearing an electronic GPS ankle monitor. He was preparing an asylum application to file in immigration court. Before he could do that, however, on March 31, 2025, ICE officers abruptly arrested Mr. Flores at one of his routine check-in appointments.

2. Respondents did not provide any notice or explanation for why they were revoking Mr. Flores’s parole and detaining him. This was a violation of Mr. Flores’s due process rights as well as statutory and regulatory law. Mr. Flores has remained in ICE custody at the Orange County Correctional Facility ever since, and he is unable to avail himself of a bond hearing before the immigration court because ICE maintains the position that he is ineligible for bond under 8 U.S.C. § 1225(b).¹ Mr. Flores’s detention—now over 7 months—has furthermore become unreasonably prolonged.

3. Petitioner has no remedy at law other than a petition to this Court, requesting the Court to order Respondents to immediately release him from immigration custody. In the alternative, Petitioner requests an individualized bond hearing before this Court. In such a bond hearing, the government should bear the burden of proving by clear and convincing evidence that continued detention remains justified, and the Court should consider whether alternatives to

¹ Mr. Flores’s position is that the only appropriate statutory basis for his current detention is 8 U.S.C. § 1226(a), which is the discretionary custody provision for noncitizens and includes a statutory right to a bond hearing. While ICE has maintained that Mr. Flores is being held under 8 U.S.C. § 1225(b), Respondents may also allege that he is detained pursuant to another custody provision, 8 U.S.C. § 1231. Regardless of which provision applies, Mr. Flores’s arrest and prolonged detention violate due process and mandate release.

detention and Mr. Flores's ability to pay bond would mitigate any concerns as to flight risk or danger.

PARTIES

4. Petitioner is a 41-year-old asylum seeker from El Salvador who was paroled into the United States in November 2023. He has been detained by Respondents at the Orange County Correctional Facility in Goshen, New York since March 2025. Mr. Flores' removal proceedings are venued at the Varick Immigration Court in New York, New York. He currently has a pending appeal before the Board of Immigration Appeals ("BIA") and a Petition for Review pending before the Second Circuit Court of Appeals.

5. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York, and acts as the Warden for the Orange County Correctional Facility, where Petitioner is detained. As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Road, Goshen, NY 10924.

6. Respondent LaDeon Francis 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 Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

7. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Petitioner and is named in his official capacity. In this capacity, he is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises

Respondent Francis, and he is legally responsible for Petitioner's detention and removal. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20536.

8. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of New York, she supervises Respondent Francis, and she is legally responsible for Petitioner's detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem's office is located at the U.S. Department of Homeland Security, Washington, District of Columbia 20528.

9. Respondent Pam Bondi is named in her official capacity as the Acting 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 proceedings and the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Respondent Bondi's office is located at the U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

JURISDICTION

10. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. CONST. amend. V; and the Suspension Clause, U.S. CONST. art. I, § 9.

11. This Court has jurisdiction in equity to order Petitioner's immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release." (citation omitted)).

12. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. §§ 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens 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).

VENUE

13. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner.'" (citing 28 U.S.C. § 2242) (cleaned up)).

14. The place of employment of Respondent Francis is also located within the District, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

EXHAUSTION

15. Administrative exhaustion is not statutorily required in immigration detention cases. *See Beharry v. Ashcroft*, 329 F.3d 51, 56 (2d Cir.2003); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234-35 (S.D.N.Y. 2010). No exhaustion requirement applies to the claims raised in this petition because the immigration court and Board of Immigration Appeals ("BIA") lack

jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute). Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538-39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010).

16. Here, Mr. Flores requested release under humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A) from ICE in September 2025. *See* Exh. A (Emails between Counsel and ICE Officer). Acting Assistant Field Office Director Joseph Pujol indicated that Mr. Flores was “subject to mandatory detention” and that he “does not fall under the parameters to be eligible for parole.” *Id.* Therefore, no further exhaustion is required as it would be futile. *See, e.g., Araujo-Cortes*, 35 F. Supp. 3d at 538-39.

FACTUAL AND LEGAL BACKGROUND

I. Specific Facts About Petitioner

17. Mr. Flores is a 41-year-old husband and father who was born in El Salvador and has lived in the United States since November 9, 2023. He and his family fled El Salvador after they were attacked and threatened with death by members [REDACTED]. *See* Exh. B, Declaration of Petitioner Jose Flores Palma at ¶ 4.

18. Mr. Flores and his family first attempted to enter the United States to seek protection on July 22, 2022. *See id.* at ¶ 5. He and his family crossed the border at or near McAllen, Texas and were briefly detained by U.S. Customs and Border Protection (“CBP”). *Id.* Officers subjected them to expedited removal proceedings without asking whether they had a fear of returning to El Salvador. *Id.* Mr. Flores and his family were not provided an opportunity to see an

immigration judge or apply for asylum or other relief from removal. *Id.* They were removed to El Salvador on July 24, 2022. *Id.*

19. Mr. Flores and his family made a second attempt at finding safety in the United States. *Id.* This time they did everything possible to follow the correct legal processes. They arrived in Mexico in October 2023 and applied to legally enter the United States using the CBP One application. *Id.* at ¶¶ 6-7. They waited until their appointment on November 9, 2023, and were permitted to proceed to an interview at the port of entry. During that interview, Mr. Flores was asked numerous questions, including whether he had ever been arrested in El Salvador. He answered truthfully that he was arrested once many years prior in El Salvador on false allegations of robbery. *Id.* at ¶ 6. CBP officers then granted Mr. Flores and his family humanitarian parole and allowed him to enter the United States through the San Ysidro port of entry pursuant to 8 U.S.C. § 1182(d)(5)(A). Mr. Flores's parole is valid for 2 years and is not set to expire until November 7, 2025. *See* Exh. C (I-94). The officers also gave Mr. Flores and his wife cell phones with an application for ICE's Intensive Supervision Appearance Program ("ISAP") for them to comply with check-in orders so the agency could monitor their locations. *See* Exh. B at ¶ 9.

20. Once in the United States, Mr. Flores and his wife applied for work authorization as parolees with U.S. Citizenship and Immigration Services ("USCIS"). The government granted their applications and issued them work permits and social security numbers. *Id.* at ¶ 8. Mr. Flores's work permit is also valid until November 7, 2025. *Id.*; *see* Exh. D (Copy of work permit). Mr. Flores worked in roofing to support his family while his wife cared for their two minor sons. Exh. B. at ¶ 11.

21. Every month, Mr. Flores was scheduled to receive phone and video calls from ISAP. *Id.* at ¶¶ 8-9. He also had to submit photographs of his face and appear for in-person check-

in appointments at both the ICE and ISAP offices when requested. *Id.* Additionally, Mr. Flores was subject to an ankle monitor. *Id.* at ¶ 10.

22. On December 10, 2024, DHS filed a Notice to Appear (NTA) with the New York Immigration Court initiating removal proceedings against Mr. Flores under 8 U.S.C. § 1229a and placing him on the court's non-detained docket. *See* Exh. E (Notice to Appear). The NTA indicated his first hearing would be on May 13, 2025, at 8:30 am at the New York Immigration Court at 26 Federal Plaza in New York, New York. The NTA alleged that Mr. Flores was an "arriving alien" who was inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an "immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document" At his first hearing, Mr. Flores would have the opportunity to respond to DHS's allegations and apply for relief from removal, such as asylum, withholding of removal, or protection under the Convention Against Torture ("CAT") based on his fear of returning to El Salvador.

23. In the meantime, Mr. Flores continued to comply with ICE's supervision appointments and attended at least 7 in-person check-in appointments with ICE and over 20 in-person appointments with ICE's Intensive Supervision Appearance Program ("ISAP"). *See* Exh. B at ¶ 9.

24. On March 21, 2025, Mr. Flores received a call from an ISAP representative in California who told him that his ankle monitor was broken and he needed to go to the ISAP office to have it replaced. *See* Exh. B at ¶ 13. Although Mr. Flores's ankle monitor appeared to be functioning normally, he followed their instructions and went to his ISAP office. He was told to return on March 31, 2025. *Id.* ¶ 14.

25. When Mr. Flores arrived the ISAP office, two ICE officers “grabbed [him] forcefully and bent [his] arms behind [his] back to handcuff [him].” *Id.* ¶ 16. Shocked and in pain, Mr. Flores asked the officers why he was being arrested; a Spanish-speaking officer told him it was “because [he] came into the country illegally.” *Id.* at ¶ 16.

26. The officers did not provide any reasoning for taking Mr. Flores into custody, even though he still had valid parole. They provided him with a notice of custody determination, which cited Immigration and Nationality Act (“INA”) Section 236 (8 U.S.C. § 1226). *See* Exh. F (Notice of Custody Determination). They then took Mr. Flores to a holding cell in 26 Federal Plaza, where he was detained with approximately 14 other individuals for about 7 hours. Exh. B. at ¶ 17.² Officers then transferred him to the Orange County Correctional Facility (“Orange County Jail” or “OCJ”), where he remains today.

27. Following his arrest and detainment by ICE, Mr. Flores’s removal proceedings were transferred to the detained docket and he was scheduled for an initial master calendar hearing on April 10, 2025. Mr. Flores appeared at the Varick Street Immigration Court *pro se* and the Immigration Judge (“IJ”) granted a continuance for him to find an attorney.

28. On April 15, 2025, DHS moved to dismiss the removal proceedings under 8 U.S.C. § 1229a against Mr. Flores and reinstate his prior order of removal from 2022. DHS alleged that

² These holding cells at 26 Federal Plaza have been the subject of federal litigation and news articles; reports revealed extreme overcrowding and inhumane conditions. *See Barco Mercado v. Noem et al.*, 1:25 CV (S.D.N.Y. Aug. 12, 2025) (order granting temporary restraining order requiring ICE to improve cell conditions); Alice Gainer & Adi Guajardo, *Video shows conditions inside NYC’s ICE processing center at 26 Federal Plaza*, CBS NEWS (July 23, 2025), <https://www.cbsnews.com/newyork/news/nyc-ice-processing-center-26-federal-plaza-video/> (reporting detainees “being held for days under deplorable conditions,” including sleeping on the floor with one communal toilet for more than 24 people, lack of edible food, and inhumane treatment); *see also Elected officials arrested during protest of NYC immigration holding facility*, NBC NEWS (Sept. 19, 2025), <https://www.nbcnews.com/news/us-news/elected-officials-arrested-protest-nyc-immigration-holding-facility-rcna232380>.

“circumstances after issuance of the Notice to Appear have changed to such an extent that continuation” of Mr. Flores’ removal proceedings was “no longer in the best interest of the government.” DHS did not specify what those circumstances were or why 8 U.S.C. § 1229a proceedings were no longer in the government’s interest.

29. On April 23, 2025, Mr. Flores—now represented by pro bono counsel through Brooklyn Defender Services—opposed DHS’s motion to dismiss, arguing that (1) DHS had not shown changed circumstances or that proceeding under 8 U.S.C. § 1229a was adverse to their interests, (2) reinstating the prior removal order was improper because Mr. Flores was paroled into the United States and did not illegally reenter, and (3) he had a right to pursue fear-based relief.

30. On April 24, 2025, the IJ granted dismissal of Mr. Flores’s removal proceedings over the objection of counsel. Mr. Flores timely appealed the dismissal of his removal proceedings with the BIA. His appeal is still pending; therefore, the IJ’s dismissal order is not final, and Mr. Flores remains in removal proceedings under 8 U.S.C. § 1229a.³

31. On April 10, 2025, the same day the IJ dismissed the removal proceedings, DHS issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order to Mr. Flores. The notice indicated that DHS determined Mr. Flores “illegally reentered the United States on or about November 9, 2023” after being removed on July 29, 2022, pursuant to a prior expedited removal order entered on July 24, 2022. The notice advised that Mr. Flores was now subject to reinstatement proceedings under 8 U.S.C. § 1231(a)(5), and that he “may contest this determination by making a written or oral statement to an immigration officer” but that he “did not have a right to a hearing before an immigration judge.”

³ An order of an immigration judge that is subject to a timely appeal is not final until the BIA has decided the appeal. *See* 8 C.F.R. § 1003.6(a).

32. Mr. Flores expressed his fear of removal and was provided a reasonable fear interview with an asylum officer on May 2, 2025. Mr. Flores spoke about his fear of torture in El Salvador; he explained that he has several tattoos, none of which are gang related, but the government could detain him on that basis alone and he would be tortured in jail by officers and/or gang member inmates. The asylum officer, however, ruled against Mr. Flores, reasoning that the harm he feared did not rise to the level of persecution or torture.

33. Mr. Flores sought an IJ review of that determination, as is his right under 8 C.F.R. § 208.31(f), (g). On May 15, 2025, an IJ affirmed the asylum officer's finding. As there is no right to appeal a reasonable fear determination to the BIA, Mr. Flores petitioned for review to the U.S. Court of Appeals for the Second Circuit.⁴ See *Flores Palma v. Bondi*, Dkt. No. 25-1271 (2d Cir).

34. As his proceedings drag on, Mr. Flores continues to languish in detention at the Orange County Jail. OCJ has been the subject of an extensive complaint to DHS's Office of Civil Rights and Civil Liberties for flagrant civil rights violations, including medical neglect, lack of access to food, and abuse, harassment, and retaliation by facility personnel.⁵ Mr. Flores is detained under conditions equivalent to criminal incarceration.

35. As a result, due to ICE's arrest without individualized review of the need for his redetention and without access to a bond hearing, Mr. Flores has endured over seven months of

⁴ In a recent published decision, the Second Circuit granted and remanded a petition for review to the BIA where a noncitizen made a similar claim. The Court noted extensive evidence in the record of "documented systematic massive torture and in-custody killings" under the Salvadoran Government's ongoing State of Exception. See *Villalta Martinez v. Bondi*, No. 24-115, -- F.4th ___, 2025 WL 2845204 at *4-6 (2d Cir. Oct. 8, 2025).

⁵ See Mar. 21, 2023, CRCL Complaint Regarding Ongoing Abuse at Orange County Correctional Facility, <https://www.law.nyu.edu/sites/default/files/2023.March.21.%20CRCL%20Complaint%20re%20OCCF.pdf>.

detention without any individualized review, let alone review by a neutral fact finder, as to whether his continued custody in a county jail is warranted. If his removal case is remanded to the IJ, Mr. Flores intends to pursue his application for asylum, withholding of removal, and protection under the CAT based on his fear of return to El Salvador. The BIA is likely to take at least several more months before it reaches a decision on his appeal of the IJ's order dismissing his 1229a proceedings. The BIA may remand his proceedings to the IJ to move forward with Section 1229a proceedings, which could take months, if not years, given Mr. Flores's and DHS's right to appeal any subsequent decision by the IJ to the BIA, and Mr. Flores's right to petition for review at the Second Circuit. At the same time, the pending Second Circuit petition for review of the reinstatement proceedings under Section 1225 will take at least several months if not longer to adjudicate.

36. Thus far, the deplorable conditions at OCJ have led to deteriorations in Mr. Flores's mental and physical health. He is locked in a cell "maybe four by two meters big" with an "iron bed with a very thin mattress" that causes him hip pain every morning. *See* Exh. B at ¶ 18. Mr. Flores cleans other detainees' cells to trade for food from the commissary because the food provided is "not edible." *Id.* at ¶ 19. He recounts being served "expired pasta that is bitter and sour," and adds: "Even on days that are supposed to be better meals like when we get chicken, the chicken sometimes still has feathers in it and when you cut into it, there are blood clots. Sometimes the meat looks uncooked." *Id.* There are days Mr. Flores is not provided toilet paper or soap. *See id.* at 20. He has developed an infection in his genitalia, warts on his feet, and "little red pimples all over [his] body" due to the unsanitary conditions in the bathroom and poor water quality. *Id.* at ¶ 21. He has sought medical attention for frequent headaches and other issues, including losing feeling in his right hand and pain in his right foot, but officers have either not responded to his

requests or been delayed in responding. *Id.* at ¶ 22. Mr. Flores is suffering from depression and feels desperate to reunite with his family. *Id.* at ¶ 25.

37. Mr. Flores's social worker, Meg Smithson, LCSW, describes Mr. Flores as "despondent" and "extremely concerned for his family's wellbeing." *See* Exh. G at ¶ 5. She notes that his ongoing detention has not only impacted his physical health but has also caused "a pronounced decline in his mental health." *Id.* at ¶ 7. Mr. Flores's concerns over his family's well-being have caused constant headaches that resulted in a diagnosis of "Cluster Headache Syndrome." *Id.* at ¶ 6. His family has also struggled financially and emotionally in his absence. *Id.* at ¶ 9 ("[T]he family was forced to vacate their apartment and are now living in a family homeless shelter in New York."), ¶ 10 ("The oldest son shows signs of high stress, and cries and calls for his father in his sleep.").

II. Legal Background:

A. Removal Proceedings and Detention Authority

38. When a noncitizen arrives at the United States border, DHS officers inspect them as applicants for admission to the United States according to processes laid out in 8 U.S.C. § 1225. Immigration officers assess admissibility and may find an applicant inadmissible if they do not have proper entry documents or if they seek entry through fraud or misrepresentation. *See* 8 U.S.C. § 1225(a)(3), (b)(1); *Jennings v. Rodriguez*, 538 U.S. 281, 287 (2018). Upon finding an applicant inadmissible, DHS can place them in removal proceedings under 8 U.S.C. § 1225(b) or 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) ("DHS has discretion to put aliens in section 240 removal proceedings even though they may also be subject to expedited removal . . ."). DHS may then decide whether to take that individual into custody for the pendency of removal proceedings or release them into the United States on parole with orders of supervision.

39. The statute provides DHS the “discretion [to] parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for the urgent humanitarian reasons or significant public benefit any alien applying for admission the United States.” 8 U.S.C. § 1182(d)(5)(A). Federal regulations specify that DHS may only release individuals on humanitarian parole if they “present neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b). These requirements—flight risk and danger—reflect constitutional constraints, since only individuals who pose a flight risk or danger may be civilly detained. *See Zadvydas*, 533 U.S. 690. The regulations contemplate parole for specific groups of individuals meeting these criteria including those “who have serious medical conditions in which continued detention would not be appropriate” or individuals “whose continued detention is not in the public interest.” 8 C.F.R. § 212.5(d)(b)(1), (5).

40. When granting parole, DHS officers have discretion to require “reasonable assurances that the [noncitizen] will appear at all hearings and/or depart the United States when required to do so.” 8 C.F.R. § 212.5(d). They also must “apply reasonable discretion” when granting parole and consider: “(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I-352 in such amount as may be deemed appropriate; (2) Community ties such as close relatives with known addresses; and (3) Agreement to reasonable conditions (such as periodic reporting of whereabouts).” *Id.*

41. Just as there are regulations governing DHS’s process of granting parole, there are regulations and constitutional limitations regarding revocation. To revoke parole, a DHS official with authority must decide either that “the purpose for which parole was authorized” has been “accomplish[ed]” or that “neither humanitarian reasons nor public benefit warrants the continued

presence of the [noncitizen]” in the United States.” 8 C.F.R. § 212.5(e)(2)(i). The regulations contemplate only two ways parole may be terminated: “automatic” and “on notice.” 8 C.F.R. § 212.5(e). Parole automatically terminates—meaning no notice is required—only where (1) the noncitizen parolee departs from the United States or (2) the time period for which parole was authorized, if limited in time, expires. *Id.* § 212.5(e)(1). In all other circumstances, written notice is required. *Id.* § 212.5(e)(2)(i). The regulations indicate that officers terminate parole with “written notice to the alien” upon “accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials . . . neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” *Id.*

Section 1229a Proceedings

42. Noncitizens seeking asylum are entitled to a full hearing in immigration court before an IJ in full removal proceedings. Section 1229a sets out the procedures and rights afforded to noncitizens, including: “the privilege of being represented. . . by counsel of the [noncitizen’s] choosing who is authorized to practice in such proceedings,” 8 U.S.C. § 1229a(4)(A), and “a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen’s] own behalf, and to cross-examine witnesses presented by the Government.” 8 U.S.C. § 1229a(4)(B). Removal proceedings under 8 U.S.C. § 1229a require that an IJ “conduct proceedings for deciding the inadmissibility or deportability of [a noncitizen]” charged with “any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.” These removal proceedings commence when DHS files the Form I-862, Notice to Appear (“NTA”) with an immigration court charging a noncitizen with one or more of the grounds of removability. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021) (describing removal proceedings).

43. Decisions made by IJs may be appealed to the BIA. 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the federal court of appeals for the judicial circuit in which the 1229a proceedings terminate. 8 U.S.C. § 1252.

Section 1225 Expedited Proceedings

44. Individuals placed into expedited removal proceedings, on the other hand, are ordered removed by an immigration officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i)). While Section 1229a proceedings are formal adversarial civil proceedings before an IJ, Section 1225 expedited proceedings are initiated and adjudicated by non-attorney immigration officers within DHS. Expedited removal is only applied to noncitizens “who have not been admitted or paroled” and who are determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) (fraud or misrepresentation) or § 1182(a)(7) (lack of a valid travel document). *See* 8 U.S.C. § 1225(b)(1)(A)(i).

Reinstatement Proceedings under Section 1231

45. For individuals who have “reentered the United States *illegally* after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed.” 8 U.S.C. § 1231(a)(5) (emphasis added).

46. To reinstate a prior order of removal, “the agency obtains the alien’s prior order of removal, confirms the alien’s identity, determines whether the alien’s reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order.” *Johnson v. Guzman Chavez*, 141 S.Ct. 2271, 2282 (2021) (citing 8 C.F.R. §§ 241.8(a)-(c), 1241.8(a)-(c)). In reinstatement proceedings, a noncitizen

is *not* entitled to a hearing before an IJ and can be removed pursuant to the reinstated removal order alone. 8 U.S.C. § 1231(a)(5).

47. Pursuant to treaty obligations codified into U.S. law prohibiting removal of individuals to countries where their lives are at risk, a noncitizen facing the reinstatement of a prior removal order is entitled to a “reasonable fear interview” (“RFI”) before an asylum officer, similar to the credible fear interview (“CFI”) by an immigration office in 1225 proceedings, if they fear return to their home country. 8 C.F.R. § 241.8(e). If the officer finds they have a reasonable fear of persecution or torture, the noncitizen is referred for a type of streamlined removal proceeding before an IJ known as “withholding-only proceedings,” where they may seek withholding of removal or protection under the CAT. 8 C.F.R. §§ 1208.16, 1208.17; *see also Riley v. Bondi*, 145 S. Ct. 2190, 2195-97 (2025); *Bhaktibhai-Patel v. Garland*, 32 F.4th 180, 184-85 (2d Cir. 2022). If the asylum officer determines that the noncitizen has not passed the RFI, the noncitizen has the right to have this determination reviewed by an IJ during a similarly abbreviated hearing. 8 C.F.R. §§ 208.31(f), 1208.31(f). Noncitizens who are in custody during “withholding-only” proceedings are held under 8 U.S.C. § 1231. The statute does not provide for a bond hearing before the IJ. *See* 8 U.S.C. § 1231; *Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021).

Detention

48. Throughout these three types of removal proceedings, a noncitizen may be detained. Congress has authorized civil detention of noncitizens in removal proceedings only for specific, non-punitive purposes. *See Jennings*, 538 U.S. at 281-84; *Demore*, 538 U.S. at 531; *Zadvydas*, 533 U.S. at 690. Immigration detention falls into two categories: (1) discretionary detention, meaning the IJ can hold a bond hearing pursuant to statute, *see* 8 U.S.C. § 1226(a); and

(2) mandatory detention, meaning the IJ cannot hold a bond hearing pursuant to statute, *see* 8 U.S.C. §§ 1225(b), 1226(c), 1231.

49. The discretionary custody provision, Section 1226(a), is the default provision for individuals in removal proceedings. It states in relevant part that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The regulations implementing that provision delineate factors that must be considered upon the detention of a noncitizen, namely whether they are a “danger to property or persons” and whether they are “likely to appear for any future proceeding.” 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If DHS determines that the noncitizen is subject to detention, the noncitizen may then request that determination be reviewed by an IJ in a bond hearing. 8 C.F.R. §§ 1003.19(d), (e). Thus, the discretionary authority in § 1226(a) requires that ICE make an individualized custody determination before a noncitizen may be taken into custody. *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (noting that the government “do[es] not dispute that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”).

B. ICE Campaign to Re-Detain Law-Abiding Noncitizens and Expedite Their Removal

50. Mr. Flores’s arrest is part of a larger, aggressive effort by DHS to arrest and detain noncitizens at routine ICE appointments and immigration court hearings, including by redetaining individuals previously released without any new circumstances or individualized consideration, and to subject them to expedited removal proceedings.

51. In January 2025, ICE instituted a daily quota for 1,200 to 1,500 arrests of noncitizens to carry out the government’s “mass deportation” plan. *See* Nick Miroff & Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up arrests*, WASHINGTON POST (Jan.

26, 2025) <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>. ICE field offices that did not reach their target would be “held accountable.” *Id.* Senior ICE officials, including White House “Border Czar” Tom Homan acknowledged that these quotas would lead to “more arrests nationwide” of individuals who do not pose public safety or national security threats. *Id.* By May 2025, that quota had doubled to a minimum of 3,000 arrests per day. *See* Hamed Aleaziz, *Under Pressure from the White House, ICE Seeks New Ways to Ramp Up Arrests*, NY TIMES (June 11, 2025), <https://www.nytimes.com/2025/06/11/us/politics/ice-la-protest-arrests.html>. Former ICE chief of staff during the Biden administration opined: “This isn’t about public safety or national security; this is about hitting a quota number. That’s it.” *Id.*

52. In order to meet their daily quotas, ICE officers began targeting noncitizens regardless of their potential dangerousness or flight risk at ICE check-in appointments and immigration court hearings. *See* Gwynne Hogan, *ICE Turns Required Check-Ins Into Arrest Dragnet in Lower Manhattan*, THE CITY (June 3, 2025), <https://www.thecity.nyc/2025/06/03/ice-arrest-dragnet-manhattan/> (“Reporters for THE CITY witnessed vehicles hauling away 16 people in handcuffs from an office where immigrants in deportation cases were summoned to sudden appointments.”); *see also* Arya Sundaram, *US judge releases Bronx man detained by ICE, citing due process violations*, GOTHAMIST (May 9, 2025), <https://gothamist.com/news/us-judge-releases-bronx-man-detained-by-ice-citing-due-process-violations> [hereinafter Sundaram] (“Ceesay is also among a growing group of immigrants who, since Trump returned to the White House, are being detained during routine ICE check-ins . . .”).

53. Part of the concerted effort to arrest and detain thousands more noncitizens per day involved lifting restrictions on officers regarding the locations and circumstances in which they could make arrests. On January 20, 2025, ICE rescinded a 2021 Memo that severely limited the

circumstances in which ICE could arrest noncitizens at or near courthouses and gave officers the green light to actively target noncitizens attending required hearings and appointments. *See* U.S. Dep't of Homeland Sec., Immigr. & Customs Enf't, "Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses") (Jan. 20, 2025) (hereinafter "January 2025 Memo"). The memo advised "ICE officers or agents [to] conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted [noncitizen(s)] is or will be present at a specific location, and where such action is not precluded by laws and imposed by the jurisdiction in which the enforcement action will take place." *Id.*

54. DHS later amended the January 2025 Memo on May 27, 2025 through a memo with the same subject line, "Civil Immigration Enforcement Actions in or Near Courthouses." *See* U.S. Dep't of Homeland Sec., U.S. Immigr. & Customs Enf't, "Civil Immigration Enforcement Actions in or Near Courthouses" (May 27, 2025) (hereinafter "May 2025 Memo"). The May 2025 Memo is substantially the same as the January 2025 Memo but it removes the part of the aforementioned sentence from the January 2025 Memo that limited immigration arrests "where such action is not precluded by laws and imposed by the jurisdiction in which the enforcement action will take place." *Compare* January 20, 2025 Memo at 2, *with* May 2025 Memo at 2. The evolution of these memos illustrate ICE's intent to arrest as many noncitizens as possible without regard for the due process requirements in making those arrests.

55. Officers have been arresting large swaths of noncitizens without regard for the individual circumstances. *See* Julia Ainsley, et al., *Under Trump administration, ICE scraps paperwork officers once had to do before immigration arrests*, NBC News (Sept. 9, 2025) <https://www.nbcnews.com/politics/national-security/trump-administration-ice-scraps-paperwork-officers-immigration-arrests-rcna229407> ("For more than 15 years, before they conducted any

operation to arrest an immigrant in the United States, officers with [ICE's] Enforcement and Removal Operations division have been required to fill out a form with details about their target – name, appearance, known address and employment, immigration history, any criminal history and more – and give it to a supervisor for approval. This year, in a sign of how the agency has moved from targeted enforcement to broad street sweeps under the Trump administration, that policy has been ended, six current and former officials and agents of ICE and [DHS] told NBC News.”). In fact, many noncitizens arrested by ICE included individuals whom ICE had previously granted parole or released from detention based on a finding that they were *not* dangerous or a flight risk. *See* Sundaram (“He was later detained by ICE in 2010 and released on an order of supervision, a document allowing him to live in the United States as long as he appeared at routine check-ins. ICE agents arrested Ceesay during a check-in around Feb. 19.”); *see also* Jasmine Garsd, *Lawyers warn clients of increased arrest risk at immigration check ins*, NPR (April 24, 2025) <https://www.npr.org/2025/04/24/nx-s1-5372694/immigration-lawyers-warn-detention-risk> (“[M]ultiple immigration lawyers told NPR they’re seeing more cases like Josue Aguilar’s: clients showing up to what they believe are routine immigration appointments, and getting detained.”).

56. Professor Paul Gowder, who teaches constitutional law and immigration law at Northwestern Pritzker School of Law has stated of ICE’s latest efforts, “The Trump administration has been going in and initiating changes to a lot of the policies that are predicates for people getting work authorization. They’ve been going in and trying to revoke authorizations, revoke parole, revoke temporary protected status. There’s still disagreement about whether many of these changes they are trying to implement are legal, and so a lot of people can kind of be in a sort of limbo.” *See* Tara Molina, *Expert says Trump administration changes to immigration policy leaving many once safe from deportation in limbo*, CBS NEWS (Oct. 17, 2025),

<https://www.cbsnews.com/chicago/news/expert-says-trump-administration-changes-to-immigration-policy-leaving-many-once-safe-from-deportation-in-limbo/>.

57. ICE also attempted to summarily revoke humanitarian parole to thousands of individuals who entered the United States through the CBP One app. In April 2025, it was reported that ICE sent out mass termination messages through the app, which was rebranded under the name CBP Home. *See* Joel Rose & Sergio Martínez-Beltrán, *Migrants who entered the U.S. via CBP One app should leave 'immediately,' DHS says*, NPR (Apr. 8, 2025), <https://www.npr.org/2025/04/08/g-s1-58984/cbp-one-app-migrants-dhs-border>. To his knowledge, Mr. Flores did not receive one of these messages before his arrest on March 31, 2025.

58. At the same time ICE increased arrests and canceled parole, the agency sought to expand the use of procedures to expedite the removal of individuals it detained. For example, DHS broadened the category of individuals who could be subject to expedited removal—which as described above is a form of removal proceedings unlike full Section 1229a proceedings, in which an individual does not have the right to go before an IJ.⁶ DHS then aggressively targeted

⁶ On January 21, 2025, DHS issued a Federal Register Notice, published in the Federal Register on January 24, 2025, that applies expedited removal to certain noncitizens arrested anywhere in the country who cannot show “to the satisfaction of an immigration officer” that they have been continuously present in the United States for more than two years. U.S. Dep’t of Homeland Sec., Designating Aliens for Expedited Removal (Jan. 21, 2025), <https://public-inspection.federalregister.gov/2025-01720.pdf> (“Rule”). The effective date of the Rule was January 21, 2025.

On February 18, 2025, ICE sent an email directive to Enforcement and Removal officers directing them to consider for expedited removal “any arriving alien (i.e., encountered at a port of entry) who CBP determined to be inadmissible and released, as long as the alien is inadmissible under [8 U.S.C. § 1182(a)(6)(C)] (fraud or willful misrepresentation) or [8 U.S.C. § 1182(a)(7)] (lack of valid immigration documents).” *See* 2025.02.18 ICE Email Directive on Expedited Removal and Nondetained Docket, Immigration Policy Tracking Project (2025) available at <https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents>. The email made clear that “[t]here is no time limit on the ability to process such aliens for [expedited removal].” *Id.*

individuals who had previously been paroled into the United States and were attending non-detained immigration court hearings, by moving to dismiss those proceedings and arresting them at those court hearings, and instead placing them in expedited removal. *See* Paul Kiefer, *ICE arrests of asylum seekers in Milwaukee show shifting tactics*, WISCONSIN WATCH (Oct. 30, 2025), <https://wisconsinwatch.org/2025/10/milwaukee-wisconsin-ice-immigration-arrests-asylum-seekers-tactics-venezuela/> (“In recent months, the agency has also begun filing motions to dismiss the immigration court cases of defensive asylum seekers, said Milwaukee immigration attorney Marc Christopher. Once the immigrants’ cases are dismissed, ICE can place them in ‘expedited removal’ proceedings—a fast-moving process that does not require a hearing.”).

LEGAL ARGUMENT

59. ICE failed to conduct any individualized review of the need for Mr. Flores’s redetention, or provide any notice or opportunity to contest his arrest, in violation of both its own regulations and due process. Instead, he was swept up in ICE’s nationwide campaign to increase arrests and detention and to summarily remove noncitizens with as little process and relief options as possible. Regardless of the current statutory basis for his detention, Respondents have further violated his due process rights by detaining him beyond seven months without any opportunity to seek release at a bond hearing.

I. Respondents violated Mr. Flores’s due process rights by revoking his parole and redetaining him without notice, explanation, or an opportunity to be heard.

60. Mr. Flores’s parole remains valid until November 7, 2025. Yet, Respondents redetained him without any written notice or inquiry into whether his individual circumstances justified revocation, in violation of 8 C.F.R. § 212.5. To date, Respondents have not articulated an explanation for their decision to revoke and redetain Mr. Flores.

61. It is unlawful for ICE to arrest a noncitizen who has been granted parole without complying with ICE's own regulatory requirements regarding the proper process for revocation of parole. *See, e.g., Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *1 (S.D.N.Y. Sept. 12, 2025); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 LX 287077, 2025 WL 1953796, at *26 (W.D.N.Y. July 16, 2025) (citing *Y-Z-L-H v. Bostock*, 2025 LX 277386, 2025 WL 1898025, at *13 (D. Or. July 9, 2025)).

62. District Courts have found that “both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole must attend to the reasons an individual [noncitizen] received parole.” *Mata Velasquez*, No. 25-CV-493-LJV, 2025 WL 1953796 at *10 (W.D.N.Y. July 16, 2025) (quotation marks omitted); *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (ordering release for a noncitizen granted parole but subsequently detained and finding he was held under 8 U.S.C. § 1226 rather than 1225 due to the passage of time in the United States on parole); *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) (“[A]n individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.”).

63. There is historical precedent for this. In 1958, the Second Circuit held that the parole of Hungarian refugees could not be revoked “without a hearing at which the basis for the discretionary ruling of revocation may be contested on merits.” *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610, 612 (2d Cir. 1958); *see also Mata Velasquez*, 2025 WL 1953796, at *16 (explaining that “the petitioner and his family had been ‘invited here pursuant to the announce[d] foreign policy of the United States’” (quoting *Paktorovics*, 260 F.2d at 613-14)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (ordering

release for a noncitizen who was paroled into the United States and redetained without individualized assessment).

64. Other courts in this circuit have also ordered release where ICE has revoked humanitarian parole without process. *See Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *21 (W.D.N.Y. May 2, 2025) (“In sum, because ICE did not follow its own regulations in deciding to re-detain [petitioner], his due process rights were violated, and he is entitled to release. And even if that were not so, he still would be released because he was not afforded even the minimal due process that protects everyone—citizens and noncitizens—in the United States.”); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 LX 287077, 2025 WL 1953796, at *10 (W.D.N.Y. July 26, 2026) (“The government therefore does not have the authority to arrest a noncitizen who has been granted parole without properly terminating that parole.”); *Chipantiza-Sisalema v. Francis*, 2025 WL No. 25 CIV. 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (ordering release where ICE detained noncitizen previously granted parole without notice or opportunity to be heard).

II. Alternatively, Mr. Flores’s ongoing detention absent a bond hearing violates due process.

65. Civil immigration detention violates due process except in “certain special and ‘narrow’ nonpunitive circumstances” where the government has a “special justification” that outweighs the individual’s core liberty interest in freedom from detention. *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972). (“Due process requires that the nature and duration of [civil] commitment bear some reasonable relation to the purpose for which the individual is committed.”). Noncitizens in removal proceedings may only be detained to ensure their appearance at future hearings and prevent danger to the public. *See Demore*, 538 U.S. at 523-33 (Kennedy, J., concurring); *Zadvydas*,

533 U.S. at 690-91; *see, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil commitment for any purposes constitutes a significant deprivation of liberty that requires due process protection.” (citations omitted)). Here, Mr. Flores has been detained for over seven months without any determination as to his risk of flight or dangerousness.

66. Regardless of the statutory basis for Mr. Flores’ detention,⁷ it has become unreasonably prolonged in violation of the Due Process clause of the Fifth Amendment. Mr. Flores has been detained in DHS custody for over seven months. This period is unquestionably prolonged given that there is no evidence that Mr. Flores presents a flight risk or a danger to the public, and that he has a strong defense against removal in the form of asylum, withholding of removal and protection under the CAT.

67. The Second Circuit applies the *Mathews* test to evaluate as-applied challenges to prolonged immigration detention without bond. *See Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024) (applying *Mathews* for mandatory detention under 8 U.S.C. § 1226(c)); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying *Mathews* for prolonged detention under 8 U.S.C. § 1226(a), the discretionary statute).

68. Under *Mathews*, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation marks omitted). In determining “what process is due,” the court considers (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of

⁷ While the government may argue that Mr. Flores is detained under Section 1225 or Section 1231, his position is that he is detained pursuant to Section 1226(a) given DHS’s grant of parole and time residing within the United States before his redetention. *See Munoz Materano v. Arteta*, 2025 WL 2630826 at *1.

additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

69. Application of these factors to Mr. Flores’s case mandates a bond hearing before a neutral arbiter where the government bears the burden of proof. *See Hasan Ahmed Taleb Al-Thuraya v. Warden, Orange Cnty. Corr. Facility et al.*, Respondents., No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (applying *Mathews* factors to order a burden-shifted bond hearing for a noncitizen detained under Section 1225(b)).

Factor 1: Mr. Flores’s Private Interest

70. Mr. Flores’s ongoing detention in a correctional facility has substantially deprived him of his private interests, of which his liberty interest is the most salient. *See J.C.G. v. Genalo*, No. 24-cv-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025) (finding that a petitioner’s confinement in a correctional facility without a criminal adjudication constituted a “substantial deprivation of liberty”). He has already spent over seven months confined in a jail setting analogous to criminal incarceration. As noted above, Mr. Flores is likely to remain detained for many more months if not years while the BIA reviews his appeal of the IJ’s order dismissing his 1229a proceedings and he pursues any future petitions for review to the Second Circuit.

71. Moreover, Mr. Flores’s detention deprives him of private interests beyond his liberty. While detained, he is unable to work and provide for his family. Prior to being detained, Mr. Flores lived with his wife and their two minor sons who are also asylum seekers. He was the sole financial provider for the family. Since his detention, Mr. Flores’s wife has been struggling to pay the bills and buy basic necessities as she has been forced into the role of a single parent. Following Mr. Flores’s detention, the family has since been evicted from their home and are living

in a homeless shelter. Mr. Flores's detention of over seven months without a bond hearing has already had the effect of depriving him of his home, an income, and access to his family leading to a serious deterioration of his mental health and physical health.

Factor 2: The Risk of Erroneous Deprivation and the Value of Additional Safeguards

72. Mr. Flores's continued confinement presents a high risk of an erroneous deprivation of his interests. The Second Circuit in *Black v. Decker* recognized that detention absent a bond hearing under § 1226(c) "markedly increased the risk of erroneous deprivation of Petitioners' private liberty interests" because there are "almost nonexistent procedural protections in place." 103 F.4th at 152; *see also Hasan Ahmed Taleb Al-Thuraya, v. Orange Cnty. Corr. Facility et al.*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (applying the *Black* framework in the context of 1225 mandatory detention).

73. Mr. Flores's present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest. In November 2023, DHS made the reasoned decision to parole Mr. Flores into the United States while he pursued his asylum claim. As part of that determination, DHS found that Mr. Flores did not pose a danger or a flight risk. Mr. Flores complied with all of ICE's instructions to attend check-in appointments and was planning to file his asylum application at his master calendar hearing in immigration court. He has never been arrested or charged with a crime in the United States. Nevertheless, in March 2025, he was not accorded any process prior to the sudden revocation of his parole and redetention. ICE has not provided any basis for its determination that a change in custody status was warranted and Mr. Flores did have notice or an opportunity to be heard.

74. Moreover, his prolonged detention without the opportunity to seek a bond amounts to an erroneous deprivation of his liberty interest.

Factor 3: The Government's Interest

75. Third, as in *Black*, the competing government interest in preventing Mr. Flores from receiving a bond hearing is minimal. DHS's basis for subjecting him to mandatory detention—i.e. his classification as an “arriving alien” who was paroled into the United States after applying for admission via the CBP One application—is not an indicator of flight risk or dangerousness, given that he was paroled with authorization from DHS, he has no criminal arrests in the United States, was complying with all of ICE's monitoring requirements, and his strong claim for fear-based relief. The government's interest in preventing dangerous absconders from leaving detention is therefore not furthered by Mr. Flores's exclusion from bond.

76. This is elucidated by the numerous factors showing Mr. Flores is neither a danger to the community nor a flight risk—including his time spent living and working as a roofer in New York; his close ties to New York where he has been raising a family with his wife and building a community in Brooklyn for their two minor sons; his lack of criminal history in the United States and his compliance with ISAP. To the extent the government argues that it has an interest in detaining “arriving aliens” so as to control admission into the United States, *see, e.g., Clerveaux*, 397 F.Supp.3d at 310-11, that interest is inapposite here, as Mr. Flores was paroled into the United States and living a law-abiding life in New York with his family before he was arrested without justification or reason at his check-in appointment.

77. A bond hearing with the burden on DHS would allow a neutral arbiter to consider the individualized factors of Mr. Flores's fitness for release, which would support the government's interest in preventing dangerous absconders from release into the community. The government's interest would not be eroded if Mr. Flores received a bond hearing. In light of these specific circumstances, Mr. Flores's continued detention by Respondents merits at least an inquiry

into whether they are detaining him for an improper purpose. Respondents violated due process by failing to provide Mr. Flores with necessary procedural protections while committing a significant deprivation of liberty.

78. The *Mathews* test applies and should be found to merit a bond hearing even if Petitioner is found to be currently detained under 8 U.S.C. 1225(b)(2). See *Hasan Ahmed Taleb Al-Thuraya*, 2025 WL 2858422, at *5 (applying *Mathews* factors to order a burden-shifted bond hearing for noncitizen detained under Section 1225(b)). In addition, numerous other district courts within the Second Circuit have held that DHS's prolonged detention of arriving noncitizens under that statute, without access to a bond hearing, violated their due process rights and required a bond hearing. See *Kouadio v. Decker*, 352 F.Supp.3d 235, 241 (S.D.N.Y. 2018) (finding prolonged detention of an arriving noncitizen was unconstitutional and noting: "Petitioner enjoys the right of appeal, and his right to asylum and admission into the United States remains open. His right to liberty is as valuable to him as it is to any U.S. citizen, and he has a constitutional right to a bail hearing that should no longer be denied to him."); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018) (finding 9 months of ongoing indefinite detention of an arriving noncitizen unreasonable in violation of due process).

79. In the event the government argues that Mr. Flores is detained under 8 U.S.C. § 1231 due to the reinstatement proceedings brought against him improperly, this Court's analysis should not change. In evaluating a habeas petition by an individual detained post-order under 8 U.S.C. § 1231, courts "must ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. District Courts have frequently applied the *Zadvydas* framework where, as here, the central question is the foreseeability of removal. The Court should apply *Zadvydas* and conclude that Mr. Flores's detention violates § 1231(a)(6)

because his removal is not reasonably foreseeable. However, in the alternative, Mr. Flores's detention is also unreasonable under multiple tests of procedural due process.

80. Regardless of whether Mr. Flores is detained under 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b), or 8 U.S.C. § 1231(a)(5) as an individual with a prior removal order, this Court should apply the *Mathews* factors as indicated above. *See, e.g., Black*, 103 F.4th at 148-50 (detention pursuant to 8 U.S.C. § 1226(c)); *Velasco Lopez*, 978 F.2d at 851 (detention pursuant to 8 U.S.C. § 1226(a)); *Cabrera Galdamez v. Mayorkas*, 2023 WL 1777310, at *4 (S.D.N.Y. Feb. 6, 2023) (applying *Mathews* factors to detention pursuant to 8 U.S.C. § 1231(a)(6)).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process) - Parole Revocation

81. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

82. 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*, 533 U.S. 678; *Demore*, 538 U.S. 510. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

83. Respondents must comply with procedural due process requirements, even while exercising their discretionary authority to detain noncitizens. *See Velasco Lopez*, 978 F.3d at 848 (noting there are “important constitutional limitations” on detention during removal proceedings).

84. Here, the government made the reasoned decision to grant Mr. Flores humanitarian parole, which is valid until November 7, 2025, and made him eligible to work in the United States

while he pursued asylum. This required a consideration of whether he posed a danger or a flight risk. However, on March 31, 2025, ICE abruptly revoked his parole without notice or opportunity to respond. ICE, to date, has not provided an explanation or any indication that Mr. Flores's individual circumstances were considered when ICE made the unilateral decision to redetain him.

85. The Due Process Clause entitles Mr. Flores to meaningful process assessing whether his detention is justified. Respondents sudden arrest and detention of Mr. Flores without an opportunity for him to contest his detention in front of a neutral adjudicator after he had been living and working in the United States for over a year and a half does not provide sufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See, e.g., Munoz Materano*, 2025 WL 2630826 at *1; *Chipantiza-Sisalema*, 2025 WL 1927931 at *5 (ordering release of petitioner redetained after immigration hearing, finding that her detention “violates her Fifth Amendment right to due process because ICE Detained her without notice, an opportunity to respond, or an individualized determination that she poses a flight risk or a danger to the community”); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering release of petitioner re-detained after an immigration court hearing and concluding “respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.”); *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”); *Singh v. Andrews*, 2025 WL 1918679, at *20 (E.D. Cal. July 11, 2025) (ordering release of individual re-detained after an immigration court hearing based

on finding that “the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained”).

SECOND CAUSE OF ACTION:

Violation of the Due Process Clause of the Fifth Amendment (Substantive Due Process)

86. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

87. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. CONST AMEND. V. The only proper purposes for immigration detention are to protect against a risk of flight or danger to the community.

88. The Fifth Amendment of the Constitution further guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that “amount to punishment.” *Bell*, 441 U.S. at 535.

89. Mr. Flores is not a flight risk nor is he a danger to the community. Respondents’ detention of Mr. Flores is punitive and a violation of his Constitutional right to Due Process under the Fifth Amendment.

THIRD CAUSE OF ACTION:

Violation of the Administrative Procedure Act; 5 U.S.C. §§ 702, 706 (Parole Revocation)

90. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

91. The Administrative Procedure Act (“APA”) requires courts to “hold unlawful and set aside agency action” that is “not in accordance with law;” “contrary to constitutional right. . . in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

92. When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954).

93. Respondents have violated the statutory law and implementing regulations for the revocation of humanitarian parole. Accordingly, they have violated the *Accardi* doctrine. *See id.*

FOURTH CAUSE OF ACTION

Violation of the Fourth Amendment to the U.S. Constitution (Unlawful Arrest)

94. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

95. Mr. Flores was detained by federal immigration officials as removable when he entered the United States. The government exercised its discretion under the Immigration and Nationality Act to release or parole him while he litigated that charge in immigration court. At the time of Mr. Flores’s 2025 ICE arrest, he had been living at liberty pursuant to a parole determination by federal immigration authorities.

96. The government lacked any information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty. His re-arrest based solely on the fact that he is subject to removal proceedings is unreasonable and violates the Fourth Amendment.

FIFTH CAUSE OF ACTION:

Violation Of Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process) -- Detention without Bond

97. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

98. Petitioner's prolonged incarceration without a bond hearing, which has lasted seven months and will likely extend much longer, violates the Due Process Clause.

99. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of continued detention and require immediate release or in the alternative, a constitutionally adequate bond hearing.

**SIXTH CAUSE OF ACTION:
Release Pending Adjudication; 28 U.S.C. § 2241**

100. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

101. "[F]ederal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas cases." *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001).

102. In assessing whether to release a petitioner during the pendency of their habeas petition, courts consider whether the petition raises "substantial claims" and whether "extraordinary circumstances exist" that make the "grant of bail necessary to make the [habeas] remedy effective." *Id.* at 230.

103. Mr. Flores has raised substantial claims, namely that his due process rights were violated when ICE revoked his parole and detained him without notice, explanation, or an opportunity to be heard. *See Salgado v. Francis*, No. 25-CV-6524 (VEC), 2025 WL 2806757 at *4 (S.D.N.Y. Oct. 1, 2025) (finding substantial claim where petitioner "asserts that detention violated her rights to substantive due process because she does not present a danger to the community or a flight risk, and to procedural de process because she was detained without notice, explanation, or an opportunity to be heard").

104. Extraordinary circumstances are present in this case given the punitive nature of Mr. Flores’s ongoing detention and the deterioration of his mental and physical health. *See* Exh B (Decl.) (describing constant feelings of sadness and depression as well as ongoing headaches, rashes all over his body, loss of feeling in right hand and foot, and lack of adequate nutrition); *Salgado*, 2025 WL 2806757 at *4 (“When it is reasonable to conclude that detention would worsen a petitioner’s health, extraordinary circumstances are present.”).

105. Finally, these circumstances—which include, ICE’s unlawful revocation of parole and detention of Mr. Flores without any notice, Mr. Flores’s deteriorating mental and physical health as a result, and the length of his detention without a bond hearing—make release necessary for the habeas remedy to be effective. *See Salgado*, 2025 WL 2806757 at *4 (finding health issues, prolonged detention absent a bond hearing, and lack of an individualized assessment of dangerousness and flight risk when detained render release necessary to make habeas remedy effective).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Flores immediately onto the same terms that existed prior to his sudden redetention; or
- (4) In the alternative, order a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner’s

continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

(4) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

(5) Grant any other and such further relief as the Court deems just and proper.

Dated: November 7, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Alexandra Lampert
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EXHIBITS TO PETITION

- A. Emails with ICE regarding release
- B. Declaration of Jose Flores Palma
- C. I-94
- D. Work permit
- E. NTA
- F. Notice of Custody Determination
- G. Declaration of Meg Smithson, LCSW