

Petitioner in this successful civil action that Respondents forced Petitioner to bring due to their unlawful conduct.

Petitioner was detained by Respondents purportedly under color of 8 U.S.C. § 1225(b) from October 21, 2025 to November 18, 2025. *See* ECF No. 1. However, as this Court and the vast majority of courts handling similar cases have found, such detention for similarly situated individuals without a bond hearing purportedly under 8 U.S.C. § 1225(b) is unlawful, and the only lawful detention for such individuals is pursuant to 8 U.S.C. § 1226(a), which affords them a bond hearing. *See* ECF Nos. 1 (at 13-15) and 4. Furthermore, given Petitioner’s lack of a criminal record or any adverse changes in his circumstances since April 2023, there was no lawful or legitimate reason to detain Petitioner in the first place on October 21, 2025, even under 8 U.S.C. § 1226(a). In fact, since Petitioner was released by Respondents on his own recognizance in April 2023, Petitioner had only *accumulated* positive factors over the following two and a half years that *reduced* his likelihood of being a flight risk, such as filing an application for relief from removal, attending all his immigration court hearings, being gainfully and lawfully employed with a work permit issued by U.S. Citizenship and Immigration Services, and appearing at all his check-ins with U.S. Immigration and Customs Enforcement (“ICE”). *See* ECF No. 1 and exhibits thereto. This was further corroborated by an immigration judge formally finding that Petitioner was not a danger to the community and ordering him

released from custody upon the posting of a relatively low bond (Petitioner thereafter posted bond and was released on November 21, 2025). *See* Ex. 1, Order of the Immigration Judge, attached. As such, Petitioner should never have been detained in the first place, and such detention served no legitimate purpose, thereby amounting to punitive detention. *See Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (holding, in a factually similar scenario to Petitioner’s detention where a petitioner was charged as being present without admission or parole and then detained without bond, that the “[p]etitioner’s mandatory detention [wa]s not authorized by § 1225, serve[d] no legitimate purpose, and amount[ed] to punitive detention, warranting habeas relief”).

Even assuming *arguendo* that Respondents did have a sufficient factual and legal basis to detain Petitioner on October 21, 2025 under 8 U.S.C. § 1226(a)—which Petitioner disputes given the above factual circumstances and proper statutory interpretation of 8 U.S.C. §§ 1225(b) and 1226(a)—the latter provision would still have afforded him a bond hearing and prevented him from being unlawfully detained for a month, which caused him significant harm by, *inter alia*, depriving him of his liberty and the ability to continue his gainful employment with which he supports his family, and by forcing him, along with undersigned counsel, to expend significant time and resources to bring a habeas petition before this Court to seek his release from unlawful detention. Accordingly, Petitioner requests that this Court

issue a decision formally declaring that Respondents unlawfully detained Petitioner from October 21 to November 18, 2025.

There is another separate, independent reason for the need for a declaratory judgment in this action. Without such definitive and declaratory relief, Respondents could seek to repeat the same unlawful conduct at any moment and potentially evade judicial review, particularly given the history and precedent set by Respondents in openly flouting established legal precedent and re-detaining similarly placed individuals without a factual or legal basis. *See, e.g., Romero Lopez v. Noem*, No. 25-cv-16890-SDW (D.N.J. Nov. 5, 2025) (ECF No. 8, at 5); *Zumba*, 2025 WL 2753496; *see also* this Court’s decisions in *Chiquito Barzola v. Warden* (2:25-cv-17326); *Martinez Ron v. Lyons* (2:25-cv-17359); *Mboup v. Field Off. Dir. of N.J. Immigr. & Customs Enf’t* (2:25-cv-16882). The Supreme Court has recognized an exception to the mootness doctrine for

disputes that are “capable of repetition” while “evading review.” *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 31 S.Ct. 279, 55 L.Ed. 310 (1911). A dispute falls into that category, and a case based on that dispute remains live, if “(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975) (*per curiam*).

Turner v. Rogers, 564 U.S. 431, 439–40 (2011).

Here, the challenged actions by Respondents related to immigration detention are undoubtedly capable of being too short in duration to be fully litigated or relitigated prior to their cessation or expiration, given that Respondents can and have at any moment taken noncitizens, including Petitioner, into immigration custody and subsequently released them before the challenged actions have been fully litigated. Here, Petitioner was unlawfully detained for one month, which certainly qualifies as the type of challenged action that is too short in duration to be fully litigated. *See id.* at 440 (“Our precedent makes clear that the ‘challenged action,’ [Petitioner] Turner’s imprisonment for up to 12 months, is ‘in its duration too short to be fully litigated’ through the state courts (and arrive here) prior to its ‘expiration.’”).

There is also a more than reasonable expectation that the same complaining party—here, Petitioner—will be subjected to the same action again, as Petitioner has now been twice detained and released by Respondents, his release is conditional on continuing to attend immigration court hearings and check-ins with ICE, and ICE may *at any time* revoke his bond and rearrest him. *See* 8 U.S.C. §§ 1226(a)(2) (noting conditions of release) and (b) (“The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.”). Moreover, as documented in many cases before this and other courts, see ECF Nos. 1 and 4, Respondents have in the course of the past eleven months engaged in significant and frequent policy changes—many

unsupported by the law—that affect the detention of individuals like Petitioner, thereby further increasing the likelihood that they will again issue new rules, regulations, policy changes, and reinterpretations of the law to subject Petitioner to the same conduct complained of in his petition. Consequently, there is at least a reasonable expectation that Petitioner will be subjected to the same action again. *See Turner*, 564 U.S. at 440 (finding a more than reasonable likelihood that Petitioner Turner would again be subjected to the same action of being imprisoned, given that he had been the subject of several civil contempt proceedings and had been imprisoned on several of those occasions). Accordingly, a declarative judgment by this Court that Respondents acted unlawfully in detaining Petitioner under 8 U.S.C. § 1225(b), and that, absent a change of circumstances, they cannot subject Petitioner to the same unlawful detention, is necessitated by the facts and law at issue in this case. Even just a declaration that Respondents acted unlawfully can serve as a much-needed deterrent to prevent the same Respondents from violating Petitioner’s rights and subjecting him to unlawful detention once again.

In addition to the above reasons supporting this Court issuing the declaratory relief requested by Petitioner, such a declaration may also be needed for Petitioner to rightfully be considered the prevailing party against Respondents in this action and thereby be entitled to an award of attorneys’ fees and other expenses incurred because of Respondents’ unlawful actions, pursuant to EAJA. 28 U.S.C.

§ 2412(d)(1)(A) permits recovery of attorneys' fees for successful litigants in "any civil action," which includes civil immigration habeas. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) ("Our decisions have consistently recognized that habeas corpus proceedings are civil in nature."); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (describing habeas petition challenging immigration detention as relating to "civil, not criminal" proceedings). EAJA awards attorneys' fees if (1) the petitioner has "prevail[ed]" against the Government; (2) the Government's position was not "substantially justified," and (3) there are no "special circumstances [that would] make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Although Petitioner believe that the Court's order at ECF No. 5 ordering that "Petitioner be treated by the Respondents as detained under 8 U.S.C. § 1226(a)" may suffice for Petitioner to be deemed the prevailing party, for the avoidance of doubt and to ensure Petitioner's rightful access to EAJA fees, Petitioner respectfully requests an order that may be deemed final and appealable, as described above, which clearly declares that Respondents' actions vis-à-vis Petitioner were unlawful and that this Court did in fact grant the relief requested in Petitioner's habeas petition through its November 17, 2025 order which ordered Respondents to provide the relief requested in the petition, *i.e.*, affording Petitioner a bond hearing. *See Buckhannon Bd. Care & Home Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604-605 (2001) (noting that a prevailing party is one who achieved a

“material alteration of the legal relationship of the parties” and a “judicial imprimatur on the change”); *see also* 28 U.S.C. § 2412(d)(1)(B) (requiring that the successful litigant file the fee application within 30 days of “final judgment” in the action).

WHEREFORE, Petitioner respectfully requests that the Court enter a final, appealable order in this action declaring that the petition was meritorious because Petitioner was unlawfully detained, and that as a result, this Court granted the relief requested in the petition by ordering Respondents to afford Petitioner a bond hearing as required by 8 U.S.C. § 1226(a). Such an order will then allow Petitioner to submit his EAJA fees application to this Court within 30 days after the expiration of the 60-day period for filing an appeal.

Respectfully submitted,

Date: December 16, 2025

By: /s/ Brandon A. Kennedy
Brandon A. Kennedy, Esq.
Grant, Herrmann, Schwartz & Klinger
LLP
107 Greenwich Street, 25th Floor
New York, NY 10006
Tel.: (332) 232-1605
bkennedy@ghsklaw.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded a copy of the foregoing, with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing to all counsel of record.

Respectfully submitted,

Date: December 16, 2025

By: /s/ Brandon A. Kennedy
Brandon A. Kennedy, Esq.
Grant, Herrmann, Schwartz & Klinger
LLP
107 Greenwich Street, 25th Floor
New York, NY 10006
Tel.: (332) 232-1605
bkennedy@ghsklaw.com
Attorneys for Petitioner