UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NASEER AHMED
Petitioner,

v.
JOSEPH FREDEN, Deputy Field Office Buffalo Federal Detention Center Facility, et al.,
Respondents.

Case No. 6:25-CV-6662-EAW

PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS AND IN FURTHER SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Naseer Ahmed respectfully submits this supplemental memorandum in opposition to Respondents' Motion to Dismiss and in support of his petition for a writ of habeas corpus. During oral argument on December 18, 2025, the Court requested supplemental briefing on whether Respondents had legal authority to re-detain Petitioner Naseer Ahmed in August of 2025, notwithstanding a long-final bond order issued in 2016 under 8 U.S.C. § 1226(a). This memorandum addresses that question. Petitioner respectfully incorporates by reference the factual and procedural history set forth in his prior submissions, as outlined in ECF Nos. 1 and 15.

The undisputed record reflects that in 2016, an Immigration Judge determined—after full adversarial proceedings—that Mr. Ahmed was not a danger to the community nor a flight risk and ordered him released

on bond pursuant to § 1226(a). ECF No. 17-1, at 11. DHS elected not to appeal that decision, did not seek reconsideration, and never alleged changed circumstances that would justify disturbing the Immigration Judge's custody determination. As a result, the bond order became final and governed Petitioner's custodial status for nearly nine years, during which Petitioner complied with the terms of release and remained in removal proceedings under 8 U.S.C. § 1229 (a).

Respondents arrested and detained Petitioner on August 31, 2025, while he was visiting his brother-in law at Fort Drum. Respondents detained him because they determined that he had pending removal proceeding, but they had known this since 2016. In reality, was re-detained for simply being in the wrong place at the wrong time. He complied with the conditions of his release, and there are no facts to suggest that he poses a danger to the community or is a flight risk. At the time of his re-detention, his BIA appeal was still pending and was present in the United States as an applicant for asylum.[1] After he was re-detained, the BIA issued an order dismissing his appeal.[2] Mr. Ahmed timely filed a petition for review and a motion to stay removal with the 2nd Circuit Court of Appeals. ECF No. 15-1.

Respondents now argue that, notwithstanding the finality of the 2016 bond determination and Petitioner's nine years of peaceful and productive presence in the community under that order, a subsequently issued administrative decision—*Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)—permits them to disregard the prior order entirely, treat Petitioner as if the IJ's bond decision never existed, and mandate his detention under a different provision--8 U.S.C. § 1225(b) --without any new hearing or individualized process. As set forth below, Respondents' position is inconsistent with settled principles of administrative finality and

[1] The I-213 produced in connection with Mr. Ahmed's detention states he did not present any immigration documentation that "would allow them[sic] to be or remain in the United States legally." Yet the form also notes that an Employment Authorization Card was approved in 2022. ECF No. 17-1, at 23-25.
[2] The matter had been pending a decision from BIA since 2021.

retroactivity, conflicts with binding Second Circuit precedent and EOIR's custody regulations and cannot be reconciled with the requirements of due process.

The question before the Court is not whether the agency may alter its interpretation of the INA on a prospective basis. Rather, the question is whether Respondents may disregard their own final, un-appealed order—without invoking any of the procedural mechanisms provided by statute or regulation—and re-detain Petitioner nearly nine years later based solely on a subsequent change in administrative interpretation. Under the circumstances presented here, the answer is no.

First, Respondents' position improperly attempts to retroactively nullify a custody order nine years after it became final based solely on a later change in agency interpretation of the INA. Retroactive nullification of settled administrative adjudications is barred under longstanding retroactivity principles recognized by the Supreme Court and repeatedly applied in the Second Circuit. The implied application of *Matter of M-S-* to undo the effect of a 2016 bond order—particularly where Petitioner relied on that order for almost a decade—is incompatible with those principles.[3]

Second, even if retroactive application were permissible, *Matter of M-S-* misinterprets the governing statutory and regulatory framework. The text and structure of the INA, read together with binding Second Circuit precedent and EOIR's own custody regulations, confirm that individuals in § 1229 a proceedings may be detained, if at all, under § 1226(a), not § 1225(b). The Second Circuit has unequivocally held that § 1226 governs detention during full removal proceedings. *Hechavarria v. Sessions*, 891 F.3d 49, 57–58 (2d Cir. 2018). EOIR's custody regulations likewise vest Immigration Judges with jurisdiction over the custody of all noncitizens in § 1229a proceedings except arriving aliens, and Petitioner is not an arriving alien. *Matter of M-*

[3] The record contains no indication that Petitioner was ever provided notice that his bond was being revoked due to a change in administrative decisional authority. The first time that Respondents discussed the case was at the end of their reply to Petitioner's Opposition to Motion to Dismiss. ECF No. 17, at 14. There is no indication in the record that the bond was returned and is presumably still being held by the Respondent in spite of Mr. Ahmed's re-detention.

S- contradicts the statute and the regulations, and after *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), is not entitled to deference under *Chevron*. Under independent judicial review, *M-S-* is not persuasive.

Third, and in any event, Petitioner's re-detention violates the Due Process Clause. Petitioner was re-arrested nearly nine years after the Government implemented the IJ's bond order, without any allegation of changed circumstances, without any opportunity to contest continued detention, and without any evidence that they extinguished or returned the bond to the obligor. Due process does not permit Respondents to imprison a person arbitrarily, without individualized justification, based solely on a newly preferred reading of immigration detention statutes. As the Second Circuit has repeatedly held, the deprivation of physical liberty requires meaningful procedural protection. *Ragbir v. Homan*, 923 F.3d 53, 69–71 (2d Cir. 2019). Arbitrary re-detention of a noncitizen who has already been found eligible for release, and who has abided by his obligations for nearly a decade, is exactly what due process forbids.

This memorandum proceeds in three parts. First, it explains why Respondents may not retroactively apply *Matter of M-S-* to nullify the Immigration Judge's final 2016 bond order. Second, it demonstrates that, under Second Circuit law and EOIR's regulatory framework, detention of a noncitizen in § 1229 (a) (full removal) proceedings are governed by § 1226 (a), not § 1225(b), and that *Matter of M-S-* is an incorrect interpretation of the INA. Third, it shows that Petitioner's re-detention—undertaken without any individualized finding, changed-circumstances determination, or hearing—violates the Due Process Clause. Because Respondents have neither statutory nor constitutional authority to disregard the 2016 bond order or to detain Petitioner under § 1225(b), the Court should deny the Motion to Dismiss and grant habeas relief in the form of immediate release on the 2016 bond order. At minimum, the Court should order Respondents to provide a new bond hearing at which they bear the burden of proof to demonstrate changed circumstances, danger to the community or risk of flight by clear and convincing evidence.

ARGUMENT

I. PETITIONER'S RE-ARREST WITHOUT A HEARING AT WHICH RESPONDENTS MUST JUSTIFY WHETHER ANY CHANGED CIRCUMSTANCES HAVE OCCURRED SINCE THE 2016 BOND ORDER IS UNLAWFUL UNDER 8 U.S.C. § 1226(a)

"If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." *Department of Homeland Security v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020) (citations omitted). It is undisputed that Mr. Ahmed has been released on bond since 2016, because Respondents concluded that he was eligible for and entitled to release. Petitioner's custody was adjudicated in 2016 pursuant to 8 U.S.C. § 1226(a), and that adjudication became final when DHS elected not to appeal or seek reconsideration of the release decision. Respondents' effort to re-detain Petitioner nearly nine years later depends on disregarding that final custody determination and substituting a later-issued administrative interpretation in its place. The INA, the governing regulations, and longstanding BIA precedent do not permit that result.

A. The 2016 Bond Order Became Final Under § 1226(a), and Respondents Forfeited Any Contrary Custody Theory.

In 2016, an Immigration Judge conducted a bond hearing pursuant to 8 U.S.C. § 1226(a), determined that Petitioner did not pose a danger to the community or a risk of flight, and ordered his release on bond. ECF No. 17-1, at 11. DHS did not appeal that determination to the Board of Immigration Appeals, did not seek reconsideration, and did not invoke any other procedural mechanism to disturb the Immigration Judge's custody ruling. Under the applicable regulations, the bond order therefore became final. *See* 8 C.F.R. § 1003.19(f).

As a general matter, new judicial decisions apply to cases that are still pending on direct review. *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993). That principle generally extends to administrative adjudications that remain pending or non-final. *George v. McDonough*,

596 U.S. 740, 751 (2022). However, it does not permit the retroactive application of new precedent to reopen or nullify adjudications that have already become final. Once a decision is final, principles of finality and reliance constrain both courts and agencies from revisiting settled determinations absent an established procedural mechanism. *See United States v. Quintieri*, 306 F.3d 1217, 1225–27 (2d Cir. 2002); *Johnson v. Holder*, 564 F.3d 95, 99–100 (2d Cir. 2009).

Here, the Immigration Judge's bond order became final in 2016 when Respondents elected not to appeal. For nearly nine years thereafter, Respondents adhered to that determination and permitted Petitioner to remain at liberty. The administrative precedents on which Respondents now rely—*Matter of M-S-*, I. & N. Dec. 509 (A.G. 2019) and *Matter of Q. Li* 29 I. & N. Dec. 66 (B.I.A. 2025), and *Matter of Yajure Hurtad,o* 29 I. & N. Dec. 216 (BIA 2025*)* —were issued years after that final adjudication. Respondents may not invoke those later-issued decisions to retroactively unsettle a custody determination that was final and binding long before those cases were decided.

The INA itself in 8 U.S.C. § 1226(b) further confirms that § 1226(a) governs Petitioner's custody. Section 1226(b) authorizes DHS to revoke bond only within the § 1226 framework and presupposes the continued applicability of § 1226(a). It does not authorize DHS to disregard a final bond order unilaterally or to re-detain a noncitizen absent compliance with the procedural limits imposed by statute and regulation.

B. Respondents May Not Retroactively Apply New Administrative Precedent to Nullify a Final Bond Order Issued Years Earlier

Unable to identify any process afforded Petitioner in connection with reopening the 2016 custody determination, Respondents instead rely on *Matter of M-S-*, a decision issued in 2019, to justify Petitioner's re-detention. They essentially posit that the decision is a self-executing warrant to take anyone back into detention that was released under prior agency practice. That reliance fails under settled principles governing retroactive application of agency adjudications.

In assessing whether Respondents' retroactive application of *Matter of M-S-*, 27 I. & N. and later cases upset Petitioner's due process rights, this Court should apply the standard set forth by the D.C. Circuit, which considers "(1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard." *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 390 (1972); *See Lehman v. Burnley,* 866 F.2d 33, 37 (2d Cir. 1989) (adopting the *Retail Wholesale* test). The BIA itself adopted this test in 2019 in *Matter of Cordero-Garcia,* 27 I. & N. Dec. 652, 657 (B.I.A. 2019). The 2nd Circuit has held that the *Retail* retroactivity analysis applies in removal proceedings. *Obeya v. Sessions*, 884 F.3d 442, 445 (2d Cir. 2018) ("Agencies may create new rules through adjudication, but the retroactive application of the resulting rules 'must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.'").[5]

All of these factors weigh in favor of Petitioner. *M-S* is not a case of first impression, but rather expressly reverses a prior decision. It represents an abrupt departure form well established agency practice. "[I]t is a case where [Respondents] had confronted the problem before, had established an explicit standard of conduct, and now attempt[] to punish conformity to that standard under a new standard subsequently adopted." *Retail*, 466 F.2d at 391. At the time of

[5] There does not appear to be any published authority from a case where a court has been asked to determine whether a change in the agency's interpretation of provisions governing the detention or re-detention of non-citizens under the Immigration and Nationality Act (INA) is retroactive. Although cases raising this question are currently pending. See, e.g. *Singh v. Chadbourne*, No. 1:25-cv-00268-SE-TSM (D.N.H. filed July 17, 2025).

Petitioner's bond hearing, the governing precedent was *Matter of X-K-*, which held that once a noncitizen received a positive credible-fear determination and was placed into removal proceedings under § 1229a, custody was governed by § 1226(a) and subject to Immigration Judge review. 23 I. & N. Dec. 731 (B.I.A. 2005). *Matter of M-S-* did not clarify an unsettled question; it expressly overturned *X-K-* based on the Attorney General's view that it had been wrongly decided.

Petitioner unquestionably relied on the legal regime implemented through the 2016 bond order. For nearly nine years, Respondents acquiesced in that reliance and never suggested that his detention was governed by § 1225(b). Retroactively applying *Matter* of *M-S-* to undo that settled adjudication would impose the most severe burden possible—the loss of physical liberty—based solely on a change in agency interpretation announced years later. Courts in this District have made clear that abrupt reversals of settled government positions, particularly after a prolonged period of stability, require consideration of reliance interests. See, e.g. *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 150 (W.D.N.Y. 2025) (citing *Regents of Univ. of Cal.*, 140 S. Ct., at 1909 (2020). Finally, the Respondents' statutory interest in in this matter is minimal when there is no evidence that Petitioner violated any terms of his release, no indication that he presents a danger to the community and where Respondents may vindicate any interest in ensuring his appearance at future proceedings through a myriad of measures of short of incarceration. *See generally*, *Velasco Lopez v. Decker*, 978 F.3d 842, 853 (2d Cir. 2020).

Once the Court concludes that *Matter of M-S-* cannot be applied retroactively to nullify the 2016 bond order, the governing detention statute remains § 1226(a), because Petitioner was released pursuant to a bond order under that provision, not paroled under § 1225(b). ECF No. 17-1, at 11.

C. Because § 1226(a) Governs, Respondents Could Re-Detain Petitioner Only Upon a Showing of Changed Circumstances Under Matter of Sugay.

Because Petitioner's custody is governed by § 1226(a), Respondents' authority to re-detain him is limited by longstanding BIA precedent. In *Matter of Sugay*, the Board held that once an Immigration Judge has made a custody determination, DHS may not alter that determination absent a change in circumstances demonstrating that the noncitizen has become a danger to the community or a flight risk. 17 I&N Dec. 637, 640 (BIA 1981). That requirement reflects the fundamental principle that custody determinations, once made, are not subject to arbitrary revision.

The record reflects that Petitioner's appeal before the Board of Immigration Appeals was dismissed only after Petitioner had already been re-detained and after this habeas petition had been filed. Even assuming that the posture or resolution of appellate proceedings could, in some circumstances, be relevant to custody, those developments did not exist at the time Respondents re-detained Petitioner and therefore could not have been considered as a contemporaneous basis for that decision. *Sugay* requires that any claimed change in circumstances precede—and justify—the revocation of release.[6] Post hoc developments cannot retroactively supply a lawful basis for re-detention that did not exist when the Government acted.

Moreover, even had Respondents considered any changed circumstances, the fact the Mr. Ahmed's BIA appeal was dismissed does not, without more, establish that he poses a flight risk warranting detention, let alone by clear and convincing evidence.[1] Respondents do not identify any

[6] The pendency appellate or circuit court proceedings is common in immigration litigation and, standing alone, does not constitute evidence that a noncitizen will abscond. Many noncitizens remain at liberty while pursuing judicial review, and the pursuit of available relief—particularly where viable avenues remain—often increases incentives to appear rather than diminishes them. Absent individualized evidence of noncompliance or evasion, the appellate posture of Petitioner's removal proceedings does not support a finding of flight risk by clear and convincing evidence.

conduct suggesting that Petitioner has failed to appear, evaded proceedings, or otherwise undermined the Immigration Judge's original custody findings. To the contrary, Petitioner has substantial incentives to continue appearing at all future judicial and administrative proceedings, including a pending petition for review and a pending motion to reopen based on an approved I-130 petition—avenues of relief that provide a strong reason to remain engaged in the process and comply with all appearance obligations.

Because Respondents have not identified any individualized, pre-existing change in circumstances that would justify re-detention under *Sugay*, their decision to re-arrest Petitioner cannot be sustained under § 1226(a). At a minimum, adherence to § 1226(a) and due process requires a new bond hearing at which Respondents must justify continued detention based on current, individualized evidence.

II. PETITIONER'S CUSTODY IS GOVERNED BY 8 U.S.C. § 1226(A), NOT § 1225(B), AND MATTER OF M-S- DOES NOT PROVIDE A LAWFUL BASIS FOR DETENTION

Respondents' assertion that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is inconsistent with the statutory structure of the INA, binding Second Circuit precedent, and EOIR's own custody regulations. Once DHS placed Petitioner into full removal proceedings under 8 U.S.C. § 1229a, custody authority shifted to § 1226(a), and the Immigration Judge had jurisdiction to determine bond. Nothing in the INA authorizes Respondents to revive § 1225(b) years later to override a final custody determination, nor does *Matter of M-S-* compel such a result.

The Second Circuit has made clear that §1226 governs detention during removal proceedings. In *Hechavarria v. Sessions*, the court explained that "Section 236 [codified as 8 USC § 1226] governs detention during removal proceedings," while § 1225 applies in the limited context of expedited removal before a case is placed into § 1229a proceedings. 891 F.3d 49, 57–

58 (2d Cir. 2018). That distinction reflects Congress's deliberate creation of two separate detention regimes: one governing the expedited removal stage and another governing formal adjudication before an Immigration Judge. Once DHS elected to issue a Notice to Appear and proceed under § 1229a, § 1226(a) became the governing detention statute.

Respondents' reading of § 1225(b)(1)(B)(ii) extends that provision well beyond its text. Section 1225(b)(1)(B)(ii) directs that a noncitizen who establishes credible fear "shall be detained for further consideration of the application for asylum." The statute does not state that such detention must continue throughout § 1229a proceedings, nor does it strip Immigration Judges of custody jurisdiction once those proceedings commence. Congress has demonstrated elsewhere in the INA that it knows how to mandate detention "pending a proceeding under section 240" when it intends to do so. *See* 8 U.S.C. § 1226(c)(1) (requiring mandatory detention of certain noncitizens during removal proceedings under 8 U.S.C. § 1229a). Its failure to include comparable language in § 1225(b)(1)(B)(ii) counsels against Respondents' expansive interpretation.

Supreme Court precedent reinforces this structural distinction. In *Jennings v. Rodriguez*, the Court analyzed the detention statutes separately, recognizing that § 1225(b) and § 1226 govern different phases of the removal process. 138 S. Ct. 830, 837–38 (2018). Although *Jennings* addressed the availability of bond hearings, it did not suggest that § 1225(b) detention authority persists indefinitely once a case enters § 1229a proceedings. To the contrary, the Court's analysis presupposed that § 1226 applies during formal removal proceedings.

EOIR's custody regulations independently foreclose Respondents' position. Under 8 C.F.R. § 1003.19(a), Immigration Judges have authority to redetermine custody in removal proceedings, subject only to specific, enumerated exceptions. Those exceptions, set forth in § 1003.19(h), do not include individuals in Petitioner's posture. Petitioner is not an "arriving alien" as defined by

regulation, and Respondents do not contend otherwise. The regulations therefore assign custody jurisdiction to the Immigration Judge. Under well-established administrative law principles, the agency may not nullify its own regulations through adjudication. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Montilla v. INS*, 926 F.2d 162, 166–67 (2d Cir. 1991).

Matter of M-S- conflicts with this regulatory framework. The decision assumes that § 1225(b) mandates detention throughout § 1229a proceedings for certain noncitizens, yet it does not reconcile that conclusion with the regulations assigning Immigration Judges custody jurisdiction in those same proceedings. After *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), courts must independently interpret statutes and may not defer to agency interpretations simply because a statute is ambiguous. When assessed under independent review, *Matter of M-S-* lacks persuasive force because it conflicts with the INA's structure and the agency's own regulations. Rather the agency's prior decision in *Matter of X-S* is more convincing application of relevant laws and regulations and is entitled to respect under the *Skidmore.* See, *Est. of Landers v. Leavitt,* 545 F.3d 98, 107 (2d Cir. 2008), as revised (Jan. 15, 2009).

Although Respondents do not expressly rely on *Matter of Q. Li*, that decision further illustrates the limits of DHS's authority to revisit custody after a bond determination has become final. In *Q. Li*, the Board emphasized that DHS's ability to reassess detention arose only after DHS took a concrete, legally operative procedural step—specifically, the issuance of a new Notice to Appear—which altered the individual's procedural posture and supplied a lawful basis to revisit custody. 29 I&N Dec. 66, 70–72 (BIA 2025). Here, Respondents took no such step. They did not issue a new Notice to Appear, initiate a new custody proceeding, or invoke any mechanism recognized by statute or regulation for reopening or reconsidering the 2016 bond order. Read properly, *Q. Li* confirms that DHS must take affirmative procedural action before disturbing an

existing bond determination and underscores the absence of any lawful process preceding Petitioner's re-arrest in this case.

At bottom, Respondents' interpretation would permit DHS to toggle between detention statutes long after proceedings have commenced and custody has been adjudicated. Nothing in the INA authorizes that result. Under Second Circuit law and EOIR's regulations, Petitioner's custody is governed by § 1226(a), and *Matter of M-S-* does not provide a lawful basis for mandatory detention in this case.

III. PETITIONER'S RE-DETENTION WITHOUT ANY INDIVIDUALIZED FINDING OR PROCEDURAL SAFEGUARD VIOLATES THE DUE PROCESS CLAUSE

Even if Respondents could establish a statutory basis for detention—which they cannot—their re-detention of Petitioner is independently unlawful because it violates the Due Process Clause of the Fifth Amendment. Petitioner was re-detained nearly nine years after a final bond order authorized his release, without any allegation of changed circumstances, without any individualized determination of danger or flight risk, and without any hearing. Respondents' sole justification is a subsequent change in agency interpretation. Due process does not permit the deprivation of physical liberty on that basis alone. *Velasco Lopez v Decker,* 978 F.3d 842 (2nd Cir. 2020).

The Second Circuit has repeatedly recognized that civil immigration detention implicates a substantial liberty interest protected by the Due Process Clause. Although immigration detention is civil in nature, it remains a severe restraint on liberty and therefore must be accompanied by meaningful procedural safeguards. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In *Ragbir v. Homan*, the Second Circuit emphasized that abrupt and unexplained governmental action that deprives a noncitizen of liberty—particularly after a period of stability—raises serious due process concerns. 923 F.3d 53, 69–71 (2d Cir. 2019). The court stressed that due process limits the

Government's ability to reverse course without individualized justification.

Those concerns are present here. For nearly a decade, Respondents accepted the Immigration Judge's determination that Petitioner did not warrant detention and allowed him to remain at liberty under bond. Respondents now seek to reverse that determination without identifying any factual change and without providing Petitioner an opportunity to be heard. Such action lacks the procedural regularity and individualized assessment that due process requires.

Courts in this District have applied these principles in the immigration detention context. In *Hemans v. Searls*, the court held that continued detention without an individualized justification violates due process, emphasizing that liberty may not be curtailed absent a showing tailored to the individual. 2019 WL 955353, at *5 (W.D.N.Y. Feb. 27, 2019). Similarly, in *Fremont v. Barr*, the court rejected detention unsupported by a current assessment of flight risk or danger to the community. 2019 WL 1471006, at *7 (W.D.N.Y. Apr. 3, 2019). These cases reflect a consistent understanding within this District that detention must be justified by individualized findings, not categorical assertions.

Respondents do not contend that Petitioner has become a danger to the community or a flight risk since 2016. They do not allege any misconduct or changed circumstances. Instead, they rely exclusively on *Matter of M-S-* as a categorical mandate. But due process requires more than reliance on a legal interpretation divorced from the individual's circumstances. As the Supreme Court has explained, freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause, and its deprivation must be accompanied by adequate procedural safeguards. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

This Court's due process inquiry is guided by the familiar three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which the Second Circuit routinely

applies in the immigration detention context. *See, e.g.*, *Ragbir v. Homan*, 923 F.3d 53, 69–71 (2d Cir. 2019); *Velasco Lopez v. Decker*, 978 F.3d 842, 851–53 (2d Cir. 2020). First, there is no serious dispute that Petitioner suffers a substantial deprivation of liberty. Civil immigration detention constitutes a severe restraint on freedom, *see Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and that deprivation is especially acute where, as here, Petitioner is confined notwithstanding a prior Immigration Judge bond order authorizing his release—an order that Respondents elected not to appeal and that remained operative for nearly nine years.

Second, Respondents' re-arrest of Petitioner without any hearing before a neutral decisionmaker creates a substantial risk of erroneous deprivation of Petitioner's liberty interest in being free from arbitrary confinement. The Second Circuit has emphasized that due process requires "meaningful procedures" before the government may deprive a noncitizen of liberty, particularly where detention turns on individualized assessments of danger or flight risk. *See Velasco Lopez*, 978 F.3d at 852–53. Here, Respondents assert no changed circumstances and yet claim authority to re-detain Petitioner solely on the basis of a later administrative interpretation, without affording any opportunity to contest detention. That approach magnifies the risk of error because it dispenses entirely with individualized factfinding and neutral review. As the Second Circuit has recognized, placing the burden on an individual to disprove danger or flight risk is itself fraught with difficulty, *see id.* at 853, and the risk of erroneous deprivation is even greater where, as here, the government bypasses the hearing process altogether.

Third, although the government has a legitimate interest in the efficient administration of the immigration system, that interest is diminished in Petitioner's case. The Second Circuit has acknowledged that detention may serve governmental interests in ensuring appearance and protecting the community, but only where detention is tethered to individualized determinations

of necessity. *See Lora v. Shanahan*, 804 F.3d 601, 614 (2d Cir. 2015), *vacated on other grounds*, 138 S. Ct. 1260 (2018). Where Respondents have not alleged that Petitioner is dangerous or a flight risk, continued detention does little to advance those interests and instead risks imposing needless confinement. Indeed, limiting detention to those individuals who actually present a danger or risk of flight conserves governmental resources and aligns enforcement practices with constitutional constraints.

Balancing these factors, due process does not permit Respondents to re-detain Petitioner—after nearly nine years of lawful release under a final bond order—without providing, at a minimum, a hearing at which Respondents must justify detention based on current, individualized evidence.

Finally, to the extent that Respondents rely on dicta in *Department of Homeland Security v. Thuraissigiam,* to limit the reach of due process rights in habeas for non-citizens, that reliance is misplaced. *Thuraissigiam* addressed the scope of habeas review for an individual apprehended immediately upon entry who sought to obtain judicial review of an expedited removal order. 140 S. Ct. 1959, 1983–84 (2020). The Court emphasized the petitioner's lack of connection to the United States and failure to effectuate a meaningful entry and did not hold that noncitizens in § 1229a proceedings lack due process protections against arbitrary immigration detention in cases involving long-term presence and ongoing removal proceedings.

Courts in this District have recognized that *Thuraissigiam* is not confined only to the "admission context," but rather that its application depends on the statutory authority under which DHS is acting, and the nature of the right asserted by the noncitizen in a habeas proceeding. In *Gonzales Garcia v. Rosen*, this Court rejected the argument that *Thuraissigiam* is limited to challenges to admission decisions and applied it to detention where the petitioner was apprehended

shortly after unlawful entry and therefore was treated as still "on the threshold" of entrance. 513 F. Supp. 3d 329, 334–36 (W.D.N.Y. 2021).

In *Mata Velasquez v. Kurzdorfer*, another court in this District acknowledged the holding of *Gonzales Garcia* but explained that *Thuraissigiam* does not "foreclose" challenges that concern a different governmental action—there, parole revocation and release—particularly where fundamental fairness concerns and reliance interests are implicated. 794 F. Supp. 3d 128, 151 & n.12 (W.D.N.Y. 2025) (discussing *Gonzales Garcia* and concluding that *Thuraissigiam* did not foreclose arguments "regarding parole revocation and release"). Although Mr. Ahmed's case does not involve parole, the same structural point applies here: Respondents determined that it was appropriate to release him under 8 U.S.C. § 1226(a)——and they have not identified any statutory mechanism by which § 1225(b) returned him to the "threshold" of entry. See, *Thuraissigiam,* 591 U.S., at 107, ("aliens who have established connections in this country have due process rights in deportation proceedings"); *Id*, at 193 ft 12. (Sotomayor, J., dissenting) (noting that the Court's holding that non-citizens lack due process rights "regarding their application for admission" does not reach due process rights that do not involve their application for admission such as prolonged or arbitrary detention).Because the only asserted basis for Mr. Ahmed's current custody is § 1226(a), neither *Thuraissigiam* nor *Gonzales Garcia* supports the proposition that Respondents may re-detain him years after a final bond order without an individualized hearing and without any showing of changed circumstances.

Here, Petitioner has lived in the United States for years, was released pursuant to a final bond order, and remained subject to the authority of the immigration courts throughout that period. During that period, he developed substantial ties to the United States including being a spouse and a parent to US Citizens. Re-detaining him without any individualized assessment or hearing is

inconsistent with the procedural protections that due process requires. At a minimum, due process demands that Respondents justify continued detention through a neutral process that considers Mr. Ahmed particularly circumstances. Because Respondents have not done so, Petitioner's detention is unconstitutional.

CONCLUSION

For the foregoing reasons, the Court should order Respondents to immediately release Petitioner, as Respondents do not assert any changed circumstance warranting his re-arrest. In the alternative, the Court should order that Petitioner is entitled to a new bond hearing pursuant to 8 U.S.C. § 1226(a) at which Respondents bear the burden of proving, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight sufficient to justify continued detention, consistent with Second Circuit precedent.

Respectfully submitted,

Date: December 23, 2025

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Dated: December 23, 2025

By: /s/ Carl Hurvich