UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jose GARCIA DOLORES,

Petitioner,

- against -

LaDeon FRANCIS, in his official capacity as Acting Assistant Field Office Director for the New York City Field Office for Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States of America,

Respondents.

No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Jose Garcia Dolores, brings this challenge following his unlawful seizure and detention by Respondents at a bus stop in the heart of Brooklyn. Mr. Garcia Dolores's detention is part of a coordinated campaign of race-based stops in largely Hispanic and immigrant neighborhoods in New York City. On information and belief, Respondents had no individualized basis to stop and detain him.

2. Mr. Garcia Dolores is a longtime resident of New York City. But under Respondents' recent unlawful reinterpretation of the immigration statutes, Mr. Garcia Dolores will now ostensibly be subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2), as though he is on the cusp of entry at the nation's border.

3. Petitioner's confinement pursuant to that statute is unlawful—as confirmed by a cascade of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). Rather than subjecting him to mandatory detention following his unlawful

stop, Respondents should have conducted an individualized custody review. But they did not. Accordingly, he brings this petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer outside this District. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 2:25-cv-1963 (MEF) (D.N.J.) Mar. 19, 2025), ECF No. 81 (enjoining transfer and removal of an immigration habeas petitioner under the All Writs Act). Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his release.

PARTIES

4. Petitioner is resident of Brooklyn, New York who has lived in the U.S. continuously for over a decade. On information and belief, he is now detained in this district.

5. 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, 7th Floor, New York, New York 10278.

6. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a)

(2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Washington, District of Columbia 20528.

7. Respondent Pam Bondi is named in her official capacity as the 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 and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

8. Federal district courts have jurisdiction to hear habeas corpus petitions 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).

9. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. § 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

10. Venue is proper in this Court because on information and belief Petitioner is detained by Respondents in Manhattan, within the jurisdiction of this Court, at the time of filing.

SPECFIC FACTS ABOUT PETITIONER

11. Mr. Garcia Dolores is a resident of Bushwick, Brooklyn. He is Hispanic. He has resided in the U.S. continuously for over a decade. On information and belief, prior to his unlawful detention on November 18, 2025, he had not had contact with immigration authorities in the U.S.

12. Bushwick is a predominantly Hispanic neighborhood.[1]

13. Mr. Garcia Dolores is a deeply rooted and engaged member of his community. He has been a member of a local community organization, Make the Road New York, since 2018.

14. On November 18, Mr. Garcia Dolores was detained at a bus stop near a busy intersection in Brooklyn. On information and belief, agents detained and questioned him without any basis apart from his race and presence in a largely immigrant neighborhood.

LEGAL FRAMEWORK

The Government's Statutory Authority to Detain Noncitizens

15. The two primary provisions of the United States Code that govern the detention of noncitizens prior to an order of removal are 8 U.S.C. § 1226(a) and 8 U.S.C § 1225(b).[2]

16. Section 1226(a) governs the detention of most noncitizens who are already in the United States and subject to formal removal proceedings before an immigration court under 8

[1] NYU Furman Center, *Elmhurst/Corona Neighborhood Indicators*, available at https://furmancenter.org/neighborhoods/view/bushwick (last visited Nov. 18, 2025) (noting nearly 46% of residents in Bushwick identified as Hispanic).

[2] Section 1226(c) concerns mandatory detention for noncitizens who have been convicted, or in some circumstances arrested, for certain criminal offenses, and is irrelevant to the instant petition, as none of Petitioner's arrest fit the relevant offenses under Section 1226(c). Moreover, Respondents are not relying on Section 1226(c) to justify Petitioner's detention.

U.S.C. § 1229a. 8 U.S.C. § 1226(a); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) ("[U.S. immigration law] authorizes the Government to detain certain [noncitizens] ***already in the country*** pending the outcome of removal proceedings under §§ 1226(a) and (c).") (emphasis added).

17. As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings,* 583 U.S. at 287-89.

18. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C. § 1226(a)(2)(A)–(B).

19. Under the Section 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025).

20. If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

21. In contrast with Section 1226, which applies to "certain [noncitizens] *already in the country*," *Jennings*, 583 U.S. at 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (*i.e.*, "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

22. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

23. Since Respondents adopted their new policies, dozens of federal courts around the country, including many in this district, have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See, e.g., Lopez Benitez v. Francis*, 1:25-cv-05937-DEH, 2025 WL 2267803, slip. op. at *10-18 (S.D.N.Y. August 8, 2025) (ECF No. 14) ("*Lopez Benitez*"); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025); *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025).

24. Many courts have ultimately decided that when Section 1225(b)(2) is applied unlawfully, release is the most appropriate remedy. *Lopez Benitez*, 2025 WL 2371588 at *15 (concluding that detention while waiting for a bond hearing is "inadequate to address the denial of due process that Mr. Lopez Benitez was entitled to in the first instance"); *Chipantiza-Sisalema v.*

Francis, No. 25-CV-5528, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (finding that a custody redetermination hearing does not cure any constitutional violations and that such a remedy "rings hollow"); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025) (noting that "there was no 'initial decision' as ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a); thus, a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention"); *Lepe v. Andrews*, No. 1:25-CV-01163, 2025 WL 2716910, at 10 (E.D. Cal. Sept. 23, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *12–13 (E.D. Va. Sept. 19, 2025).

Noncitizens' Procedural Due Process Rights

25. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

26. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

27. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge

constitutional rights." *Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

28. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

29. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

30. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

31. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, No. 25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

32. In light of a noncitizen's due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen *requires an individualized determination* as to the noncitizen's risk of flight and danger to the community. *See, e.g.*, *Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632, 2025 WL 2084921, at *1 (N.D. Cal. July 24, 2025).

33. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *13 ("Respondents' ongoing detention of [Mr. Lopez

Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights.") (citations omitted).

34. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same); *Contreras Maldonado*, 2025 WL 2985256, at *5–6 ("Respondents' post-hoc reasoning at the August 14, 2025 bond hearing does not rectify the lack of individualized determination at the time of arrest" and "[t]he court therefore finds that Petitioner's due process rights were violated when she was detained without an individualized determination under § 1226. . . . The Court grants the writ of habeas corpus . . . and orders Respondents to release Petitioner").

35. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g.*, *Tumba Huamani v. Francis,* 25-CV-8110 (LJL), 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025); *Lopez Benitez*, 2025 WL 2371588, at *15; *Lomeu*, 2025 WL 2981296, at *9; *Soto*, 2025 WL 2976572, at *9; *see also Contreras Maldonado*, 2025 WL 2985256, at *7; *Rivera Zumba*, 2025 WL 2753496, at *11; *Maklad v. Murray*, No. 1:25-CV-946, 2025 WL 2299376, at *10 (E.D. Cal. Aug 8, 2025); *Pinchi*, 2025 WL

2084921, at *7; *Velasquez*, 2025 WL 1953796, at *18; *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025); *Kelly*, 2025 WL 2381591, at *8; *Rosado*, 2025 WL 2337099, at *19; *Valdez*, 2025 WL 1707737, at *5.

36. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination as to Petitioner before his summary arrest just steps from his home. Respondents' likely reliance on Section 1225(b)(2)'s mandatory detention provision to justify their actions establishes their decision to forego any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which in fact provides the sole lawful authority for detaining individuals residing in the U.S. Indeed, in what is becoming a routine litigation strategy, Respondents will likely advance a two-part argument to perpetuate their unlawful detention scheme: first, they will claim Petitioner's detention is lawful under Section 1225(b)(2), and then, as a fallback, urge that to the extent Section 1226 applies (which an immigration judge is foreclosed from concluding absent a court order) that the Petitioner should seek an administrative bond hearing. All the while, Petitioner will likely remain in detention awaiting such a hearing and for any administrative appellate process to run its course. Immediate release is the only remedy that would end this game of bait-and-switch.

37. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Although he submits this is insufficient to vindicate the immense due-process violation inherent in his race-based detention, a bond hearing is a mechanism to mitigate his continued unlawful confinement.

TIMELINE PURSUANT TO 28 U.S.C. § 2243

38. Courts considering petitions for writs of habeas corpus are directed to either issue a writ "forthwith," or to direct the respondent to show cause why the writ should not be granted within three days, or, with good cause, within twenty days. 28 U.S.C. § 2243.

39. Once the government has responded, the statute directs the Court to schedule a hearing on the petition "not more than five days after the return unless for good cause additional time is allowed." *Id.*

40. Because Petitioner's liberty remains heavily burdened during his continued detention, we ask the Court to adhere to the clear schedule set forth in § 2243 and order the Government to Show Cause within three days as to why the Petition should not be granted.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Failure to Conduct an Individualized Pre-Detention Assessment)

41. Petitioner realleges and incorporates by reference each and every allegation contained above.

42. 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 v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

43. The Second Circuit applies the *Mathews v. Eldridge* factors to determine what due process requires in the context of immigration detention, balancing: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez*, 978 F.3d at 851 (citing 424 U.S. at 335).

44. Petitioner's private interests here are strong: he has been deprived of his liberty. Indeed, detention is the "carefully limited exception" and implicates the "most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

45. Further, Respondents detained Petitioner without notice, without an opportunity to respond, and without any meaningful evaluation as to his particular circumstances, including whether he poses a flight risk or a danger to the community.

46. With respect to the government's interest, Respondents have not offered any individualized purpose for Petitioner's detention. *Zadvydas*, 533 U.S. at 690–91.

47. Necessarily, therefore, based on ICE's view that Petitioner's detention was mandatory, an individualized assessment of the factors in his case—including his strong ties to the U.S. and over a decade years of residence in this country—was not made prior to his detention. *See Lopez Benitez*, 2025 WL 2371588, at *11 ("The problem is that Respondents have not offered any explanation for Mr. Lopez Benitez's detention other than their initial assertion that it is mandatory—that is, that it is *non-discretionary*. Such an assertion is precisely the *opposite* of an exercise of discretion, which entails some sort of judgment") (emphasis in original).

48. For the foregoing reasons, Respondents' detention of Petitioner violates the rights guaranteed to him by the Due Process Clause of the Fifth Amendment to the United States Constitution. As multiple courts have held, no amount of post-deprivation process can cure the foregoing violation, and Petitioner should be released.

COUNT TWO
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION
(Substantive Due Process)

49. Petitioner realleges and incorporates by reference each and every allegation contained above.

50. The Due Process Clause prohibits the government from depriving any person of "life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. At its core, a person's protected liberty interest mandates freedom from arbitrary imprisonment and applies with equal force to individuals in immigration detention. *Zadvydas*, 533 U.S. at 690; *Doherty v. Thornburgh*, 943 F.2d 204, 209 (2d Cir. 1991). Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *U.S. v. Salerno*, 481 U.S. 739, 755 (1987)).

51. In the immigration context, detention is nonpunitive and therefore held to different standards than criminal detention. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 491 (1999). Specifically, Courts have recognized only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 853–54; *Faure v. Decker*, No. 15-CV-5128, 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2025). Detention is nevertheless the "carefully limited exception" and implicates the "most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

52. Throughout the years that he's been in the United States, Petitioner has proven that he is not a flight risk or a danger to the community at large. *See Zadvydas*, 533 U.S. at 690–91 (noting that immigration detention aims to ensure the detainee's appearance at immigration

proceedings and protect the community from dangerous individuals). Because Respondents' detention of Petitioner detention bears no "reasonable relation" to the government's interests in preventing flight and danger, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), his detention is devoid of any reasoned justification.

53. For the foregoing reasons, Respondents' arbitrary and abrupt detention of Petitioner violated his substantive due process rights.

COUNT THREE

VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION
(Freedom from Unlawful Stop and Seizure)

54. Petitioner realleges and incorporates by reference each and every allegation contained above.

55. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized." U.S. Const. amend. IV.

56. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). The Government bears the burden of providing "specific and articulable facts" to support reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). The race of an individual cannot itself create reasonable suspicion, even for a temporary stop. *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975); *Noem v. Vasquez Perdomo*, No. 25A169, --- S.Ct. ---

-, 2025 WL 2585637, at *3 (Sep. 8, 2025) (Kavanaugh, J., concurring). Officers lacked reasonable suspicion to even approach Petitioner, and certainly lacked probable cause to arrest him.

57. "[T]o establish reasonable suspicion, an officer cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law-abiding population." *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006); *see also Noem v. Vasquez Perdomo*, 606 U.S. __ (2025), 2025 WL 2585637, at *3 (Kavanaugh, J., concurring) ("To be clear, apparent ethnicity alone cannot furnish reasonable suspicion[.]").

58. Petitioner's detention had no basis to stop, search and detain petitioner apart from his race. Rather, his detention was part of a coordinated, indiscriminate sweep of individuals who appeared to be of Hispanic descent in immigrant neighborhoods in New York in the past month. Hispanic individuals are stopped, detained, questioned, and in some cases threatened based solely on their race.

59. Petitioner's detention violates the Fourth Amendment because he was arrested without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855, 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner's Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination before re-arresting and detaining noncitizen in removal proceedings).

60. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado*, 2025 WL 2337099, at *18, *report and recommendation adopted*, 2025 WL 2349133 (ordering habeas petitioner's "release from detention . . . granted because her Fourth Amendment rights were violated.").

61.

COUNT FOUR

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) and Implementing Regulations

62. Petitioner realleges and incorporates by reference each and every allegation contained above.

63. Upon information and belief, Respondents are currently detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), its mandatory detention authority.

64. However, Petitioner was, at the time of his arrest and detention by Respondents, not seeking admission to the United States. He was already residing in the United States.

65. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

66. Because Petitioner detention should be governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b), to Petitioner is unlawful under the Immigration and Nationality Act .

COUNT FIVE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

67. Petitioner realleges and incorporates by reference each and every allegation contained above.

68. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2)(A).

69. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in

view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

70. Respondents' decision to detain Petitioner and suddenly subject him to mandatory detention under Section 1225(b)(2) as a result of their indiscriminate raids in certain New York City neighborhoods, irrespective Petitioner's individual circumstances, is arbitrary and capricious and contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

b. Declare that Respondents' actions violate the Fourth Amendment;

c. Declare that Respondents' actions violate the Administrative Procedure Act;

d. Grant a writ of habeas corpus ordering Respondents to immediately and unconditionally release Petitioner from custody;

e. Alternatively, order that a bond hearing be held before a neutral adjudicator where the Government bears the burden of proof of establishing by clear and convincing evidence that Petitioner is a flight risk or a danger to the community;

f. In the alternative, issue an order to show cause directing the government to respond to this Amended Petition within three (3) days, and hold a hearing within eight (8) days, pursuant to 28 U.S.C. § 2243;

g. Order a stay of removal to retain the Court's jurisdiction while these proceedings are pending;

h. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

i. Grant such further relief as this Court deems just and proper.

/s/ Paige Austin
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