UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| Victor Hugo Pesante Castro,<br><br>Petitioner,<br><br>v.<br><br>Raul Maldonado Jr. Warden Metropolitan Detention Center, Brooklyn, NY, TODD LYONS, field office director for U.S. Immigration and Customs Enforcement (ICE) in New York, Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General<br><br>in their official capacities,<br><br>Respondents. | Case No. 2:25-cv-6844<br><br>**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**<br><br>Agency No.: A-[redacted] |

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION, TO THE PETITION FOR WRIT OF HABEAS CORPUS**

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## INTRODUCTION

Petitioner Victor Hugo Pesantez Castro respectfully submits this Reply in further support of his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

This case presents a straightforward question: may ICE lawfully arrest and detain a noncitizen before issuing a Notice to Appear ("NTA"), before issuing a warrant, and without conducting any individualized custody determination? Courts in this District and elsewhere have repeatedly answered that question in the negative.

ICE unlawfully arrested and detained Mr. Pesantez Castro—who was not, at the time of his arrest, in removal proceedings—without serving him with an NTA, without a valid arrest warrant, and without affording him any individualized custody determination. Rather than address these statutory and constitutional violations, Respondents simply repackage arguments that have been repeatedly rejected by courts in this District, contending that Petitioner's detention falls under 8 U.S.C. § 1225(b)(2)(A) instead of § 1226(a).

Respondents' position finds no support in the case law of the Eastern District of New York. Unable to cite a single decision from this District endorsing their theory, Respondents rely on a handful of outlier cases, while ignoring the overwhelming body of contrary authority from both the EDNY and SDNY.

Indeed, as Judge Furman recently observed in *Guzman Cardenas v. Almodovar*, No. 25 Civ. 9169 (JMF), Respondents' selective citation practices raise concerns regarding their duty of candor to the tribunal. Slip op. at 6.

## PROCEDURAL HISTORY

Petitioner unlawfully entered the United States in August 2021 by crossing the U.S.–Mexico border without inspection. On November 19, 2025, at approximately 6:00 a.m., ICE officers encountered and arrested Petitioner in Corona, New York while conducting a targeted enforcement action aimed at another individual. Prior to that date, Petitioner had never been encountered by ICE, CBP, or USCIS.

ICE did **not** serve Petitioner with an NTA at the time of arrest. Instead, an NTA directing Petitioner to appear before an immigration judge on December 17, 2025 was served **after** his arrest. Approximately four and a half hours later, at 10:30 a.m., ICE determined—without explanation—that Petitioner was subject to mandatory detention and transferred him to the Metropolitan Detention Center in Brooklyn.

## LEGAL ARGUMENT

### I. ICE'S ARREST AND DETENTION OF PETITIONER WERE UNLAWFUL BECAUSE THE NTA AND ARREST WARRANT WERE ISSUED AFTER—NOT BEFORE OR CONTEMPORANEOUS WITH—HIS ARREST

Respondents fail to dispute that ICE arrested Petitioner before serving him with an NTA and before issuing a warrant. Courts in this District have held that either violation alone is sufficient to require immediate release.

Respondents' vague assertions that Petitioner was "taken into ICE custody and issued a Notice to Appear" obscure the critical timing defect. See Resp't Br. at 1 ¶ 3; 8–9. The Declaration of the Supervisory Detention and Deportation Officer similarly states that Petitioner was arrested at approximately 6:00 a.m., while the NTA was served only "[d]uring the same set of processing"—language that confirms the NTA was not issued prior to arrest.

As this Court recently held in *Gopie v. Lyons*, No. 2:25-cv-05229 (E.D.N.Y. Nov. 13, 2025), ICE lacks authority to arrest a noncitizen before issuing an NTA. Under 8 C.F.R. § 1236.1, an arrest pursuant to Form I-200 may occur only "[a]t the time of issuance of the notice to appear, or at any time thereafter."

The *Gopie* court concluded that ICE's failure to comply with this requirement was "a dispositive and independent basis to grant the writ."

The same defect exists here. ICE arrested Petitioner without statutory or regulatory authority. The subsequent issuance of an NTA and warrant cannot cure an unlawful detention that was invalid from its inception.

## II. PETITIONER IS NOT AN "ALIEN SEEKING ADMISSION" UNDER § 1225(b)(2); HIS DETENTION IS GOVERNED BY § 1226(a)

Respondents argue that Petitioner—who has lived in the United States for approximately four years and resides with his U.S. citizen son—is an "applicant seeking admission" subject to mandatory detention under § 1225(b)(2). That argument has been squarely rejected by courts in this District.

In *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025), Judge Choudhury held that § 1225(b)'s mandatory detention provisions apply only to noncitizens who are actually "seeking admission," not to individuals already residing in the United States. Reading § 1225(b) otherwise would render statutory language superfluous.

The Supreme Court has likewise recognized that noncitizens "already in the country" are governed by § 1226(a). "8 U.S.C. § 1226(a)…provides for discretionary authority to detain other noncitizens who are '**already in the country**'". (emphasis added) *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

The SDNY recently reached the same conclusion in *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025), holding that a noncitizen residing in the United States for more than two years was not "seeking admission" and therefore not subject to § 1225(b)(2). Therefore, Petitioner's detention is governed by § 1226(a).

## III. ICE VIOLATED DUE PROCESS BY FAILING TO MAKE A CUSTODY DETERMINATION PRIOR TO OR CONTEMPORANEOUS WITH ARREST

Because Petitioner's detention falls under § 1226(a), ICE was required to make an individualized custody determination **before or at the time of arrest**. Respondents concede that no such determination was made until approximately 10:30 a.m.—more than four hours after Petitioner was arrested.

Courts in this District and the SDNY have repeatedly held that such post-hoc determinations violate due process. See *Gopie v. Lyons*, *Lopez Benitez v. Francis*, *J.U. v. Maldonado*, *Kelly v. Almodovar*, among many others.

As *Gopie* explained, "By not making a prior or contemporaneous determination of custody, ICE failed to provide the pre-deprivation process required in this setting." This violation independently requires issuance of the writ.

## IV. ICE ALSO VIOLATED THE FIFTH AMENDMENT BY FAILING TO CONDUCT ANY MEANINGFUL INDIVIDUALIZED ASSESSMENT

Even setting aside the timing defect, Respondents provide **no evidence** of what the purported "custody determination" entailed. The declaration offers no explanation of the factors considered, no documentation, and no indication that Petitioner was afforded any opportunity to be heard.

Courts have repeatedly found such opaque and conclusory assertions insufficient under the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gopie*; *Muñoz Materano v. Arteta*, No. 25-CV-6137, 2025 WL 2648721, at *5–*7 (S.D.N.Y. Sept. 12, 2025).

Here, ICE did not even apply generic "high-risk" labels—it provided no reasoning at all. This complete absence of process further violates due process and compels release.

## CONCLUSION

For the foregoing reasons, of Respondents Multiple violations of Petitioners Due Process Rights, this Court should grant Petitioner's Writ of Habeas Corpus.

Respectfully submitted,

/s/ Avi Silberberg, Esq.
Avi Silberberg, Esquire

Dated: December 21, 2025
Queens, New York