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

**YEYSON PEREZ VELASQUEZ,**
***Petitioner,***

**v.**

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

**JUDITH ALMODOVAR,**
**in her official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement;**

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

**PAUL ARTETA,**
**in his official capacity as the Orange County, New York Sheriff.**

***Respondents.***

**Civil Action No. 1:25-cv-10338**

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

## INTRODUCTION

1. Respondents, Immigration and Customs Enforcement ("ICE"), are unlawfully subjecting Petitioner Yeyson Perez Velasquez ("Mr. Perez Velasquez") to mandatory detention under an immigration statute that does not apply to him. He is one of latest individuals to be subjected to the federal government's unlawful and overwhelmingly rejected reinterpretation of the immigration statutes that, in the government's view, allows them to keep him indefinitely detained under 8 U.S.C. § 1225(b)(2).[1]

2. Courts in this district and neighboring districts have granted nearly identical petitions ordering immediate release or, at a minimum, ordering ICE to show cause why immediate release should not be granted. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citing hundreds cases in Appendix A at the end of the decision and noting "[t]he challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States"); *see also Lopez Benitez v. Francis*, 795 F.Supp.3d 475 (S.D.N.Y. 2025); *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025).

3. Petitioner seeks the same relief here: immediate and unconditional release from detention, or at minimum, enforcement of an immigration judge's ("IJ") alternative bond grant of $6,000,

[1] *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) (holding that "an Immigration Judge lacks authority to hear a bond request" filed by a noncitizen held in mandatory detention under Section 1225(b)(2)).

as detailed *infra*. Alternatively, he seeks an emergency stay on his transfer from the district and an order to show cause why he should not be released immediately.

4. On November 2, 2025, ICE detained Mr. Perez Velasquez after a warrantless stop in the parking lot of a Long Island, New York deli, where he was getting coffee and breakfast. Plainclothes ICE officers approached him and displayed photos. The officers, who did not identify themselves as ICE, questioned if he knew the people in the photos. When he said he did not know the people, the ICE officers threatened to arrest him. After Mr. Perez Velasquez asked if they had a warrant for his arrest, the officers violently detained him by breaking a window of his car and pulling him out. *See* Ex. A, Declaration of Jessica Coffrin-St. Julien ("Coffrin-St. Julien Decl.") at ¶¶ 5–9; Ex. B, Declaration of Petitioner Yeyson Perez Velasquez ("Perez Velasquez Decl.") at ¶¶ 2–13; Ex. C, Photo of Petitioner's Damaged Car after Arrest.

5. Mr. Perez Velasquez, who has no criminal convictions, has been swept up in a recent campaign of street stops by Respondents, in which Latino men going about their daily lives are stopped under false pretenses, questioned, and then swiftly detained.[2] ICE engaged in no individualized process to determine whether he should be jailed.

6. Mr. Perez Velasquez's confinement is unlawful, as confirmed by the rising tide of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). *See Barco Mercado*, 2025 WL 3295903, at *4 (citing cases).

7. An IJ erroneously found that he could not release Mr. Perez Velasquez on bond because is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Ex. D, Bond Order. The IJ,

[2] Gwynne Hogan, "Sidewalk Arrests Seize New Yorkers in ICE's Latest Surge," Nov. 26, 2025, https://www.thecity.nyc/2025/11/26/ice-arrests-streets-sidewalks-detention-immigrants.

however, held in the alternative that if he had jurisdiction to grant bond, he would grant Mr. Perez Velasquez a $6,000 bond. Coffrin-St. Julien Decl. ¶ 16.[3]

8. Accordingly, Mr. Perez Velasquez brings this petition seeking his immediate and unconditional release, or at minimum, enforcement of the IJ's alternative bond grant.

9. 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); *see also Perez y Perez v. Noem*, 25-CV-4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

10. 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 Mr. Perez Velasquez's detention violates federal law and (2) order his immediate release.

11. Finally, Mr. Perez Velasquez asks that the Court order Respondents to produce the Form I-213, "Record of Deportable/Inadmissible Alien," generated in his case as part of its consideration of the legality of his arrest.

[3] The IJ's bond order does not reflect this alternative $6,000 bond finding that he stated on the record at the hearing. The immigration court does not issue transcripts as a matter of course, but, if the Court desires, Petitioner's counsel can submit the audio recording of the hearing and/or a transcription created by a third-party company.

## PARTIES

12. Petitioner Yeyson Perez Velasquez is a Latino man and a resident of New York. ICE arrested him on or about November 2, 2025. He is currently detained at the Orange County Correctional Facility ("OCCF") in Goshen, New York. *See* Coffrin-St. Julien Decl. ¶¶ 4, 10.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of 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); she routinely transacts business in the Southern District of New York, and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, DC 20528.

14. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, she is the legal custodian of Petitioner. Respondent Almodovar's office is located at 26 Federal Plaza, New York, NY 10278.

15. Respondent Pamela 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 bond proceedings and the standards used in those proceedings. As such, she is the legal custodian of Petitioner.

Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

16. Respondent Paul Arteta is named in his official capacity as the Orange County, New York Sheriff. In this capacity, he is responsible for the administration of Orange County Jail and is its de facto warden. As such, he is the legal custodian of Petitioner. Respondent Arteta's office is located at Orange County Sheriff's Office, Goshen, New York 10924.

## JURISDICTION AND VENUE

17. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).

18. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenge the lawfulness of their detention by DHS. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Mr. Perez Velasquez. is incarcerated at OCCF, within this District; his immigration proceedings are venued here; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

## EXHAUSTION

20. Mr. Perez Velasquez is not required to exhaust administrative remedies because doing so would be futile. Regardless, as noted below, he has sought and been denied a bond hearing.

21. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *See Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

22. Such exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

23. Mr. Perez Velasquez's case meets every requirement. Not only will he face irreparable injury if his detention continues because he is detained under the wrong statute, and not only does his petition raise substantial constitutional questions, as detailed *infra*, but a Board of Immigration Appeals ("BIA") decision has rendered any administrative appeal futile. The BIA would be unable to provide a genuine opportunity for adequate relief.

24. Mr. Perez Velasquez challenges his detention under Section 1225(b)(2), and any attempt to exhaust administrative remedies would be futile because the BIA has predetermined the issue. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025) (holding that "an Immigration Judge lacks authority to hear a bond request" filed by a noncitizen held in mandatory detention under Section 1225(b)(2)). That remains the case despite a recent nationwide declaratory judgment in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz*

*Jr.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), which Respondents have instructed immigration judges to ignore. Accordingly, the Court can exercise jurisdiction.[4]

25. To the extent that he is required to exhaust administrative remedies in asking for a bond hearing, he has done so. Coffrin-St. Julien Decl. ¶¶ 13–16. The immigration judge disclaimed jurisdiction, and in the alternative granted a $6,000 bond that ICE will not let Mr. Perez Velasquez post. *Id.* ¶ 16. His removal defense counsel is preparing an appeal of the IJ decision to the BIA that she knows will be futile. *Id.*

## STATEMENT OF FACTS

26. Mr. Perez Velasquez is a Latino man who resides in New York State. Coffrin-St. Julien Decl. ¶ 4.

27. On or around November 2, 2025, ICE detained Mr. Perez Velasquez in the parking lot of a deli on Long Island, New York. Coffrin-St. Julien Decl. ¶ 5; Perez Velasquez Decl. ¶¶ 2–14.

[4] On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Nonetheless, as is the case here, the Executive Office for Immigration Review and its subagency the Immigration Court and DHS are refusing to abide by the declaratory relief and have unlawfully ordered that class members be denied the opportunity to be released on bond.

28. That morning, Mr. Perez Velasquez and a friend went to the deli to get coffee and breakfast. In the parking lot, a man dressed in civilian clothing and a bulletproof vest approached Mr. Perez Velasquez, who was walking to his car. The man presented a photograph of an individual and asked Mr. Perez Velasquez in English to identify the person. Mr. Perez Velasquez, who speaks little English, did his best to convey in English that he did not know who the person was. He continued walking to his car. As he walked to his car, a woman dressed in civilian clothing and a bulletproof vest approached him, showed him another photograph of an individual Mr. Perez Velasquez did not recognize, and asked him in English if he knew the person. Mr. Perez Velasquez again did his best to communicate that he did not know who the person was. He got into his car. Coffrin-St. Julien Decl. ¶ 6.

29. The woman then approached his driver's side window and instructed Mr. Perez Velasquez in Spanish to lower his window. He lowered it about halfway to speak with her. She again showed Mr. Perez Velasquez photographs of individuals he did not know. Mr. Perez Velasquez reiterated he did not know them. The woman then told Mr. Perez Velasquez that he was under arrest. Mr. Perez Velasquez asked if she had an arrest warrant. Coffrin-St. Julien Decl. ¶ 7.

30. Instead of producing a warrant, the woman asked for Mr. Perez Velasquez's identification. He presented his New York State learner's permit. At that point, the woman began to interrogate Mr. Perez Velasquez as to his immigration status and asked whether he was a U.S. citizen. Mr. Perez Velasquez said he was not going to answer any questions. He looked into his rearview mirror and saw that a sedan was blocking him from pulling out. At that point, a group of men approached Mr. Perez Velasquez's car. One of them used a

metal object to shatter Mr. Perez Velasquez's passenger-side car window. The impact unlocked the car doors. The remaining officers pulled Mr. Perez Velasquez out of the car, threw him to the ground, and arrested him. The individuals, who never identified themselves as ICE to Mr. Perez Velasquez, never produced a warrant. Coffrin-St. Julien Decl. ¶¶ 8–9; *see also* Ex. C.

31. ICE has since detained Mr. Perez Velasquez at the Orange County Correctional Facility in Goshen, New York, without a bond hearing. Stemming from the violent nature of his arrest, Mr. Perez Velasquez reports stomach and back pain in detention. He has submitted numerous medical requests and had an x-ray scheduled for November 27, 2025, but he has yet to receive the x-ray or receive medical assistance. Coffrin-St. Julien Decl. ¶ 10.

32. ICE argues that Mr. Gomez is not eligible for an immigration court bond hearing because he entered the United States without inspection and is therefore subject to unreviewed mandatory detention under 8 U.S.C. 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025). Coffrin-St. Julien Decl. ¶ 11.

33. Mr. Perez Velasquez has no criminal convictions in the United States or anywhere else in the world. Coffrin-St. Julien Decl. ¶ 12.

34. On November 25, 2025, a district court issued a nationwide class action declaratory judgment in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), holding that persons like Mr. Perez Velasquez, who entered without inspection and later apprehended by ICE in the country, are detained under the discretionary detention statute 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and therefore are eligible for a bond hearing.

35. That same day, given *Maldonado Bautista*, Mr. Perez Velasquez's immigration defense

attorney filed a bond hearing motion with the immigration court. Coffrin-St. Julien Decl. ¶¶ 13–14.

36. The next day, on November 26, 2025, the IJ scheduled the bond hearing for December 4, 2025. Coffrin-St. Julien Decl. ¶ 15.

37. On December 4, 2025, Mr. Perez Velasquez's immigration defense attorney presented arguments as to the reasons the IJ had jurisdiction to make a custody redetermination as to Mr. Perez Velasquez, as well as why Mr. Perez Velasquez is neither a danger to the community nor a flight risk. The IJ stated that *Maldonado Bautista* was not binding on the court because it could be subject to interlocutory appeal. He went on to make an alternative determination, finding that, if the court had had jurisdiction to set a bond, Mr. Perez Velasquez is not a danger and that, although he posed somewhat of a flight risk, that flight risk could have been mitigated through imposition of a $6,000 bond. His removal defense counsel intends to file an appeal with the Board of Immigration Appeals, which she knows will be futile given *Matter of Yajure Hurtado*. Coffrin-St. Julien Decl. ¶ 16.

38. Accordingly, ICE continues to indefinitely detain Mr. Perez Velasquez under § 1225. Coffrin-St. Julien Decl. ¶ 17.

39. After his violent arrest, Mr. Perez Velasquez has experienced extreme physical and emotional pain. Perez Velasquez Decl. ¶¶ 15–16. He has requested medical assistance from OCCF officials but has not received adequate care. *Id.* ¶ 15.

## LEGAL FRAMEWORK

### I. Immigration Detention Framework and Bond Hearing Eligibility

40. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

41. For decades, the immigration system has implemented this balance through a network of three mutually exclusive detention statutes.

42. First, at the border, "applicants for admission" who are "seeking admission" are placed into expedited removal proceedings and subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).[5] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

43. Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229(a), during which an Immigration Judge—and later potentially the BIA and a U.S. Court of Appeals—will decide whether or not the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status. This process can take months or even years. Any detention of individuals who are arrested inside the United States and placed in removal proceedings is subject to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). Most of these individuals are eligible for release on bond under § 1226(a), and they are consequently

[5] Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

44. The Supreme Court and Second Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees: In 2003, in *Demore v. Kim*, the Court held that, under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal adjudication. 538 U.S. 510, 513 (2003).

45. Section 1226 was most recently amended earlier this year by the Laken Riley Act ("LRA"). Pub. L. No.119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). Congress passed the LRA to expand mandatory detention under § 1226(c), the statute that subjects noncitizens convicted of certain crimes to detention without initial bond eligibility. *See id.* The LRA amendments require detention for noncitizens who have been charged as inadmissible under sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) *and* have been arrested for, charged with, or convicted of certain crimes—expressly contemplating the inclusion of people who entered without inspection within the scope of § 1226 detention. *Id.*; *see Romero v. Hyde*, No. CV 25-11631 (BEM), 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); *Sampiao v. Hyde*, No. 25-11981 (JEK), 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025).

46. Last, the INA provides for detention of noncitizens who are subject to final orders of removal. *See* 8 U.S.C. § 1231(a)–(b). As relevant here, a removal order is not final until the

Board of Immigration Appeals has dismissed any appeal of an immigration judge's decision. 8 C.F.R. § 1241.1(a).

47. This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed in essentially its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587.

## II. Noncitizens' Procedural Due Process Rights

48. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). 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,* 533 U.S. at 693.

49. 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)).

50. 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).

51. 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. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *Black v. Decker*, 103 F.4th 133, 155–56 (2d Cir. 2024).

52. 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.*

53. 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).

54. 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*, 978 F.3d at 851) (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).

55. 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.*

56. 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 v. Joyce*, No. 25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

57. 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 Lopez Benitez*, 795 F. Supp. 3d at 496 ("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); *Cuy Comes*, 2025 WL 3206491, at *6

58. 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 v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (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).

59. As a result, courts in this District have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *15; *Kelly*, 2025 WL 2381591, at *8; *Valdez*, 2025 WL 1707737, at *5.

**III. Timeline Pursuant to 28 U.S.C. § 2243**

60. 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.

61. 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.*

62. Because Petitioner's liberty remains heavily burdened during their 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.

## ARGUMENT

### I. Mr. Perez Velasquez is Not Subject to Mandatory Detention under 8 U.S.C. § 1225(b)(2)

63. ICE has unlawfully classified Mr. Perez Velasquez as "seeking admission" under 8 U.S.C § 1225(b)(2), in direct contradiction to the plain reading of the detention statutory scheme.

64. This misclassification came pursuant to a newly announced DHS policy that rejected the well-established understanding of the statutory detention framework, reversed decades of practice, and rolled out this unlawful practice nationwide.[6] Pursuant to this policy, DHS's representatives in the immigration courts began to request that immigration judges nationwide misclassify bond-eligible § 1226(a) detainees as mandatory § 1225(b)(2) detainees and refuse to conduct bond hearings on that basis.

65. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado.* 29 I. &. N. Dec. 216. There, the Board held that all noncitizens who entered the United States without admission or parole were "seeking admission" and thus subject to § 1225(b)(2) and ineligible for bond. Therefore, all immigration judges are directed to misclassify people in this manner, making them ineligible for bond throughout the course of proceedings that can take at least several months and, in many cases, years.

66. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington granted a motion for summary judgment to a class

[6] *See* ICE, Interim Guidance Regarding Detention Authority for Applicants for Admission, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applicationsfor-admission.

of noncitizens being misclassified in this way and declared that the "members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)." *Rodriguez v. Bostock*, No. 3:25-CV-05240 (TMC), 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025). Further, the Court declared that "the Tacoma Immigration Court's practice of denying bond to Bond Denial Class members on the basis of § 1225(b)(2) violates the Immigration and Nationality Act." *Id.*

67. Since Respondents adopted their new policy, "[e]very district court to address this question has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez,* 2025 WL 2782499, at *1 (collecting 22 recent cases finding against the government's interpretation); *see also Barco Mercado*, 2025 WL 3295903, at *4 (citing hundreds of cases); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same).

68. The government's new position belies the statutory text of the INA because if § 1226(a) did not cover inadmissible noncitizens, as they now purport, there would be no reason for § 1226(c), a carve out to § 1226(a), to specify that it governs certain persons who are inadmissible because inadmissible noncitizens would not be subject to the baseline statute. Instead, it would have only needed to address people who are deportable for certain offenses.

69. By including inadmissible individuals under § 1226(c), Congress clarified that, by default, § 1226(a) covers persons who are inadmissible. In other words, if someone is charged as inadmissible and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then

§ 1226(a) governs that person's detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

70. A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection.

71. The government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

72. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected nearly a century of law in the United States of allowing people inside the country to seek release while the government decided whether or not to deport them. *See*

34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

73. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which house the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

74. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

75. The LRA amendments to § 1226 that occurred just this year, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly

included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision in order to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

76. Despite the IJ's decision to side with the agency's recently adopted interpretation of the 8 U.S.C. § 1225(b)(2) and find Mr. Perez Velasquez ineligible for bond on that basis, § 1226 leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole, such as Mr. Perez Velasquez.

77. As the Supreme Court has recently held, this Court is not required to defer to the agency's contrary interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024). While "the judgment of the Executive Branch may help inform" the Court's inquiry, *id.* at 413, it does so only to the extent of its "power to persuade." *Id.* at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

78. Mr. Perez Velasquez was arrested in the United States, not while "seeking admission."

79. As a result, he does not meet the requirements of § 1225(b)(2). His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires.*

80. As a result of this unlawful classification, Mr. Perez Velasquez remains in detention with no end in sight. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his community.

## II. Respondents Failed to Provide an Individualized Assessment when Detaining Mr. Perez Velasquez in Violation of his Procedural Due Process Rights, and He Must Therefore Be Released Immediately

81. 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.

82. Accordingly, Mr. Perez Velasquez was entitled to due process of law *in advance* of any detention.

83. 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).

84. Mr. Perez Velasquez'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.

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

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

87. Necessarily, therefore, based on ICE's view that Petitioner's detention was mandatory, an individualized assessment of the factors in his case 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).

88. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before his summary arrest. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes their decision to forego any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the U.S.

89. In the alternative, Mr. Perez Velasquez seeks enforcement of the IJ's alternative bond grant of $6,000. Although Petitioner submits this is insufficient to vindicate the immense due-process violation inherent in his race-based detention, enforcement of the alternative bond grant of $6,000 is a way to mitigate his continued unlawful confinement.

## III. Mr. Perez Velasquez's Detention Bears No Reasonable Relation to a Valid Governmental Interest in violation of his Substantive Due Process Rights

90. 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)).

91. 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.

92. As evidenced by the IJ's alternative bond determination, Mr. Perez Velasquez 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 Mr. Perez Velasquez bears no "reasonable relation" to the government's interests in preventing flight and danger, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), their detention is devoid of any reasoned justification, thus violating his substantive due process rights.

## CLAIMS FOR RELIEF

### COUNT ONE

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

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

94. Respondents are currently detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), its mandatory detention authority.

95. 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.

96. 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.

97. Because Petitioner's 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 TWO

### VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

**(Procedural Due Process: Failure to Conduct an Individualized Pre-Detention Assessment)**

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

99. 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.

100. ICE provided no individualized assessment when they detained him.

101. As multiple courts have held, no amount of post-deprivation process can cure the foregoing violation, and Petitioner should be released.

## COUNT THREE

## VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

### (Substantive Due Process: Detention Bears No Reasonable Relation to Valid Government Interest)

102. Petitioner realleges and incorporate by reference each and every allegation contained above.

103. An IJ has found that Mr. Perez Velasquez would merit bond and therefore is not a danger or flight risk. Therefore, his detention bears no reasonable relation to a valid governmental purpose.

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

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's detention violates the Immigration and Nationality Act;

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

c. Grant a writ of habeas corpus ordering Respondents to immediately and unconditionally release Petitioner from custody, or at minimum, enforce the immigration judge's alternative $6,000 bond grant;

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

e. Enjoin Petitioner's transfer outside of this district;

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

g. 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

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

Dated: 12/14/2025
New York, NY

Respectfully submitted,

/s/ Nhu-Y Ngo
Nhu-Y Ngo, Esq.
The Bronx Defendres
360 East 161st Street
Bronx, New York, 10451
Ph. 347-842-1320
nngo@bronxdefenders.org

*Counsel for Petitioner*

**Exhibits**

A. Declaration of Jessica Coffrin-St. Julien, Esq.

B. Declaration of Petitioner Yeyson Perez Velasquez

C. Photo of Mr. Perez Velasquez's Car Post-Arrest

D. Immigration Judge Bond Decision

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 12/14/2025

*/s/ Nhu-Y Ngo*
Nhu-Y Ngo