

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NATHANIEL STERLING,	:	No.: 3:25cv2122 (KAD)
Petitioner,	:	
	:	
v.	:	
	:	
PAMELA J. BONDI et al.,	:	
Respondents.	:	January 9, 2026

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the court’s December 19, 2025 order to show cause (ECF 6), as modified by the court’s December 27, 2025 order (ECF 14) on the respondents’ motion for extension of time, the respondents respectfully submit this response to the petitioner’s December 24, 2025 amended petition for writ of habeas corpus (ECF 12). This response is supported by the Declaration of Keith M. Chan (the “Chan Decl.”).

The petitioner claims that his detention by Immigration and Customs Enforcement (“ICE”) violates the United States Constitution and Immigration and Immigration and Nationality Act (the “INA”). But federal law plainly and unambiguously granted ICE the discretion to re-detain the petitioner, existing procedures comport with due process, the INA does not incorporate the petitioner’s claimed common-law privilege against his arrest outside a state criminal courthouse, and there is no Tenth Amendment violation. The petition should be denied.

I. Background

A. Criminal, Immigration, and Procedural History

The respondent is a native and citizen of Jamaica, who was admitted to the United States as a nonimmigrant visitor on September 13, 2015, at the age of sixteen. (Chan

Decl. ¶6.) On May 11, 2018, he was issued a Notice to Appear (NTA) charging him with removability pursuant to section 237(a)(1)(B) of the INA as a visa overstay. (Id. ¶7.) Following his arrest, ICE elected to detain the petitioner, and in accordance with ICE regulations, the petitioner appealed that custody determination to an immigration judge. (Id. ¶8.) On June 18, 2018, the immigration judge granted the petitioner's request and ordered that he be released on a \$12,500 bond. (Id.)

On November 13, 2018, the petitioner, through counsel, filed written pleadings in immigration court admitting the allegations and conceding removability. In 2019, the respondent requested relief from removal in the form of adjustment of status pursuant to INA § 245(a) by filing a form I-485 with supporting materials.

On July 13, 2020, the immigration court conducted a hearing on the petitioner's application to adjust his immigration status. (Id. ¶9.) At that hearing, the petitioner testified that he had previously been arrested four times; specifically, the petitioner testified that he had been arrested three times in 2016 (twice for breach of peace and once for larceny), which resulted in probation. (Id.) The petitioner also testified about a 2017 arrest that arose out of an alleged sexual assault, which led to multiple criminal charges of sexual assault, including in the first degree. (Id.) Those charges were resolved by the petitioner's pleading guilty to a youthful offender adjudication, after which he was sentenced to four years of imprisonment, execution suspended, and another sentence of probation. (Id.)

On December 11, 2020, the immigration judge issued a written decision finding the respondent statutorily eligible for an adjustment of status but denying the petitioner's

application as a matter of discretion; in connection with the denial decision, the immigration judge ordered the petitioner's removal to Jamaica. (Id. ¶10.) On January 7, 2021, the petitioner appealed the immigration court's decision and removal order to the Bureau of Immigration Appeals (the "BIA"), and his appeal remains pending. (Id.)

Following entry of the petitioner's order of removal, and while his appeal was pending, the petitioner had additional encounters with law enforcement:

- On December 4, 2021, the petitioner was arrested on charges of illegal possession of a weapon in a motor vehicle, illegally carrying a pistol without a permit, interfering with an officer, criminal possession of a firearm, and possession of narcotics. The outcome of those charges is unknown, although the petitioner's counsel claims that the petitioner received accelerated rehabilitation, and the charges were dismissed. (Id. ¶11(a).)
- On May 4, 2022, the petitioner was arrested on charges of disorderly conduct in the context of a domestic violence incident. The outcome of that charge also is unknown. (Id. ¶11(b).)
- On May 5, 2025, the petitioner was issued a misdemeanor summons on charges of operating a motor vehicle under suspension, illegal use of a marker plate, operating an unregistered motor vehicle, and failure to drive in the proper lane. The petitioner was released on a written promise to appear, and the outcome of those charges is unknown. (Id. ¶11(c).)
- On August 4, 2025, the petitioner was arrested following another traffic incident, during which he allegedly acted erratically and refused to comply with

officer instructions. The petitioner was cited for various vehicular violations and was charged with interfering with an officer. Following his arrest by ICE, these charges were nolle by the State. (Id. ¶11(d).)

The petitioner's May 4, 2022 arrest for the offenses of disorderly conduct, domestic/family violence sent an Immigration Alien Response regarding the petitioner to Hartford ICE ERO. (Id. ¶12.) On August 11, 2022, ICE sent a notice by certified mail to the obligor of the petitioner's 2018 delivery bond demanding that the petitioner be delivered or appear at ICE's Hartford office for an interview to take place on September 20, 2022. (Id. ¶13; see also **Ex. A.**) After the petitioner did not appear for the interview, ICE sent on September 21, 2022, a second notice by regular mail to the obligor demanding that the petitioner be delivered or appear at ICE's Hartford office on October 5, 2022, for the purpose of detention pending his removal proceedings. (Id.; see also **Ex. B.**) After the petitioner did not appear on that date, ICE served notice on the obligor that the immigration bond had been breached. (Id. ¶14; see also **Ex. C.**) The notice provided notice of the obligor's right to appeal. (Id.) No appeal was filed in connection with the petitioner's forfeiture notice, and the bond breach became an administratively final decision. (Id. ¶14.)

On August 5, 2025, the Hartford ICE ERO Criminal Apprehension Program received an Immigration Alien Response regarding the petitioner; however, he posted a \$2,500 bond, and the East Hartford PD released him to the street before any enforcement action could be taken. (Id. ¶16.) Based on his breach of bond and the two subsequent encounters with law enforcement, ICE ERO Criminal Apprehension Program made the

decision to target the petitioner for arrest and detention, believing him to be a danger to the community. (See id. ¶17.)

On December 19, 2025, the petitioner was arrested by ICE. (Id. ¶18.) The amended petition alleges that the arrest took place “in front of the Connecticut Superior Court in Manchester, Connecticut,” where the petitioner claims to have been en route to a hearing on his 2025 criminal charges. (See Am. Pet. ¶¶2, 41-42.) In its discretion under 8 U.S.C. § 1226, ICE elected to detain the petitioner following his arrest; the petitioner currently is detained at the Wyatt Detention Center in Central Falls, Rhode Island. (Chan Decl. ¶¶18-19; see also Ex. D.)

A few hours after his arrest by ICE, and while he was temporarily detained in Hartford, the petitioner filed the habeas petition in this case, challenging his arrest and detention by ICE. (ECF 1.) On December 24, 2025, the petitioner filed the operative amended petition seeking a writ of habeas corpus. The amended petition raises four claims: first, the petitioner claims that his arrest and detention violate his Fifth Amendment due process rights because he claims to be constitutionally entitled to a pre-detention hearing; second, the petitioner claims that his arrest and detention violate the INA itself because he claims that at common law, Connecticut privileged him from arrest by ICE, and the INA incorporated that common-law privilege; third, the petitioner claims that his arrest by ICE outside a state courthouse violates the Tenth Amendment to the United States Constitution; and fourth, the petitioner seeks bail pending the outcome of his habeas petition.

On December 27, 2025, the petitioner filed in the BIA a motion to terminate, administratively close, or remand his immigration proceedings to the immigration court. On December 30, 2025, ICE filed its opposition.

On January 8, 2025, the petitioner had a bond hearing in EOIR Chelmsford where he was represented by counsel. (Chan Decl. ¶20.) Immigration Judge Natalie Smith held that DHS met its burden of proof by clear and convincing evidence to show that the petitioner is a danger to the community. (Id.; see also Ex. E.) She denied him release on bond and he reserved appeal. (Id.)

B. Habeas Corpus Standard

Section 2241 of Title 28 provides, in pertinent part, that the district court has the authority to grant writs of habeas corpus to a prisoner within the court's jurisdiction who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "Noncitizens are also entitled to challenge through habeas corpus the legality of their ongoing detention." Velasco Lopez v. Decker, 978 F.3d 842, 850 (2d Cir. 2020).

A § 2241 habeas corpus petition is "an independent inquiry into the legality of the prisoner's detention." LaSora v. Spears, 2 F. Supp. 2d 550, 59 (S.D.N.Y. 1998) (Sotomayor, J.). Moreover, "[h]abeas corpus, it is well known, is not a neutral proceeding in which the petitioner and the States stand on an equal footing." Skaftouros v. United States, 667 F.3d 144, 157 (2d Cir. 2011) (cleaned up). Rather, "it is the petitioner who bears the burden of proving that he is being held contrary to law; and

because the habeas proceeding is civil in nature the petitioner must satisfy his burden of proof by a preponderance of the evidence.” Id.

III. Argument

A. Legal Background

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. See Demore v. Kim, 538 U.S. 510, 523-26 (2003); Abel v. United States, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. See generally 8 U.S.C. §§ 1225, 1226, 1231.

“Detention during removal proceedings is a constitutionally valid aspect of the deportation process.” Velasco Lopez v. Decker, 978 F.3d 842, 848 (2d Cir. 2020) (citing Demore, 538 U.S. at 523); see Demore, 538 U.S. at 523 n.7 (“[P]rior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings.”); Carlson v. Landon, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings ““would be vain if those accused could not be held in custody pending the inquiry into their true character.”” Demore, 538 U.S. at 523 (quoting Wong Wing v. United States, 163 U.S. 228, 235 (1896)).

Section 1226 “generally governs the process for arresting and detaining . . . aliens pending their removal.” Jennings v. Rodriguez, 583 U.S. 281, 288 (2018). Section 1226(a) does not provide an alien with a right to release on bond. See Matter of D-J-, 23 I. & N. Dec. 572, 575 (A.G. 2003) (citing Carlson, 342 U.S. at 534); cf. Reno v. Flores 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”). Nor does the Constitution. Velasco Lopez, 978 F.3d at 848. Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain an alien during removal proceedings. See 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); Nielsen v. Preap, 586 U.S. 392, 409 (2019) (highlighting that “subsection (a) creates authority for anyone’s arrest or release under § 1226—and it gives the Secretary [of Homeland Security] broad discretion as to both actions”).

When an alien is apprehended, a DHS officer makes an initial custody determination. See 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” Johnson v. Guzman Chavez, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); Matter of Adeniji, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS

decides to release the alien, it may set a bond or place other conditions on release. See 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. See 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. See Matter of Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006); see also 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS]."). The immigration judge may also "consider the amount of bond that is appropriate." Matter of Guerra, 24 I. & N. Dec. at 40.

If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA within 30 days of the order. See 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Moreover, if the alien's circumstances materially change following his initial bond hearing, he may request a subsequent hearing, see 8 C.F.R. § 1003.19(e), and the outcome of that hearing is also appealable to the BIA, see Matter of Uluocha, 20 I. & N. Dec. 133, 134 (BIA 1989). If, however, the immigration judge concludes that the alien should be released on bond, federal law provides that "[t]he Attorney General at any time may revoke a bond or

parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b); see also 8 C.F.R. § 1236.1(c)(9).

B. The Petitioner’s Due Process Claim is Meritless

The petitioner’s procedural due process claim is premised on arguments that he was entitled to “a pre-deprivation hearing before [ICE] re-detained him on December 19, 2025,” and that ICE “did not engage in a timely or individualized assessment of changed circumstances regarding [his] flight risk or dangerousness prior to re-detaining him.” (Am. Pet., ¶¶59, 61.) As a result, the petitioner claims that the respondents have “violated his Fifth Amendment right to procedural due process.” (Id. ¶63.) The petitioner’s claim is unavailing.

As set forth above, after the petitioner’s May 4, 2022 arrest, ICE served upon the obligor of the petitioner’s bond – in accordance with the terms of the bond – a notice requiring the petitioner’s delivery to ICE on September 20, 2022. After the obligor failed to comply, ICE delivered a second notice requiring to the obligor requiring delivery of the petitioner to ICE on October 5, 2022. After the obligor failed to comply again, ICE declared the bond breached but did not take the petitioner into custody at that time.¹

¹The petitioner appears to take issue with the manner in which the bond was found to have been breached, alleging that ICE did not provide to him or his counsel notice of the breach. (See Am. Pet., ¶37.) The petitioner also alleges that because the bond breach letter was not executed by the District Director, “it is invalid under ICE’s own regulations.” (Id. ¶38 (citing 8 C.F.R. § 103.6(e)).

As to the first complaint, the petitioner does not allege that the terms of the bond, which was paid by a third-party obligor, required such notice. And as to the second, the authority in question has been delegated “to the Detention and Removal Program,” i.e., ERO, and the Supervisory Detention and Deportation Officer of the same. (See Ex. F, at Section 2(A)(2)(b).)

Three years later, following two more arrests, ICE exercised its discretion to rearrest the petitioner on December 19, 2025. Following his arrest on that date, ICE promptly conducted a custody determination and, in a valid exercise of its discretion, determined that the petitioner would be detained pending his removal proceedings, in light of his dangerousness.² Thus, contrary to the petitioner's claim that his detention has been unaccompanied by any individualized determination that he presents a danger or flight risk, ICE conducted such an individualized custody assessment when it first took custody of him and decided that he would be detained upon such evaluation.

Moreover, as explained above, an alien, like the petitioner, who has been denied release by ICE may seek a de novo individualized custody review by an immigration judge, which occurs through a bond hearing in immigration court. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), 1003.19. Those regulations that provide for such review specifically provide that the authority in 8 U.S.C. § 1226 is delegated to the immigration judge for the purposes of making custody determinations for individuals like Petitioner who are in removal proceedings. See, e.g., 8 C.F.R. § 1236.1(d)(1) ("Prior to [a] final [removal] order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in [8 U.S.C. § 1226] to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the [alien] may be released[.]"). The petitioner here requested a bond hearing, which took place on

²The petitioner also takes issue with the authority of the SDDO to order his detention. (See Am. Pet. ¶45 (citing 8 C.F.R. § 236.1(c)(9)).) But as above, the authority provided "under INA § 236, 8 U.S.C. § 1226, and 8 C.F.R. Part 236, relating to detention of aliens," was also delegated "to the Detention and Removal Program." (Ex. F, at Section 2(A)(2)(j).)

January 8, 2026, and that proceeding satisfies due process. Cf. Reno v. Flores, 507 U.S. 292, 309 (1993) (“due process is satisfied by giving the detained alien juveniles the right to a hearing before an immigration judge”).

Despite his bond hearing, after which an immigration judge concluded that he should be denied, the petitioner emphasizes that he received no hearing prior to his re-detention by ICE, apparently believing that even though he promptly received process at which he was able to argue in favor of his release, and even though the immigration court denied him release after that process, he should nevertheless be released from custody. But nothing in the INA or the Constitution requires a hearing before being taken back into custody, and the petitioner has received all the process that he is due.

As noted above, prior to his arrest and detention on December 19, 2025, the petitioner previously had been released on bond. But that previous release did not entitle the petitioner to additional pre-deprivation procedures, because under the discretionary detention statute, “[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b) (emphasis added); see also 8 C.F.R. § 1236.1(c)(9) (“When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If

detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.”).

Moreover, following the petitioner’s re-detention, the petitioner had the right to, and received, a bond hearing before the immigration court on review of ICE’s custody determination. See, e.g., Salvador F.-G. v. Noem, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *8 (N.D. Okla. June 12, 2025) (“a noncitizen who is re-detained after DHS exercises its broad authority to revoke a bond—even one issued by an immigration judge—may (again) seek a custody redetermination from an immigration judge and may appeal an adverse decision to the BIA”). Following that hearing, the immigration court maintained the petitioner’s custody status on the basis of the petitioner’s dangerousness; that decision, however, is subject to review by the BIA. See 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

In support of his argument, the petitioner cites various district court cases finding due process violations, but those case are meaningfully different from this one, because there the courts emphasized either ICE’s incorrect determination that the aliens were subject to mandatory detention (in which case they would receive no bond hearing), the existence of a prior decision by ICE to voluntarily release the alien, or an admitted lack of individualized determination by ICE as to the propriety of the alien’s detention. See Rodriguez-Acurio v. Almodovar, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *30-31 (E.D.N.Y. Nov. 28, 2025) (no “individualized determination,” prior release on parole, and conclusion that “ICE detained [the petitioner] under the wrong statute without any notice or opportunity to be heard”); Lesic v. LaRose, No. 25CV2746-LL-BJW, 2025 WL

3158675, at *2 (S.D. Cal. Nov. 12, 2025) (no individualized determination); Diallo v. Joyce, No. 25-CV-9909 (AS), 2025 WL 3718477, at *1 (S.D.N.Y. Dec. 23, 2025) (“no statutory basis” for detention); Lopez Benítez v. Francis, 795 F. Supp. 3d 475, 495 (S.D.N.Y. 2025) (incorrect determination of mandatory detention and no individualized determination); Barco Mercado v. Francis, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *11 (S.D.N.Y. Nov. 26, 2025) (same); Lopez v. Sessions, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (no bond hearing available and previous Government determination against detention); Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (no individualized justification for re-detention apart from stale entry of order of removal).

In this case, of course, the petitioner is unquestionably subject to discretionary detention under section 1226, ICE did not make a custody determination in the petitioner’s favor that it is revisiting, and ICE did perform an individualized assessment of the petitioner’s dangerousness when electing to re-detain him, which decision was based on the petitioner’s continued criminal conduct. Moreover, even certain of those cases cited by the petitioner appear to conclude that existing processes available to those subject to discretionary detention are constitutionally adequate. For example, in Barco Mercado, the court observed:

To be sure, Section 236(b) would have allowed the Attorney General to, at any time, revoke Mr. Barco’s bond, rearrest him under the original warrant he was issued, and detain him. The Court offers no opinion on whether doing so would have been right or wrong. But redetaining Mr. Barco under Section 236 would have required respondents to provide Mr. Barco with a series of procedural protections set forth in applicable regulations. To properly redetain Mr. Barco under Section 236, an immigration officer first would have had to exercise his or her discretion

to revoke Mr. Barco's release on bond. After Mr. Barco was redetained, his bond would have had to have been revoked and cancelled. Mr. Barco then could have applied to an immigration judge for a bond hearing and release. If the immigration judge denied his request, Mr. Barco could have appealed that decision to the BIA.

2025 WL 3295903, at *11 (footnotes omitted); see also Lopez Benitez, 795 F. Supp. 3d at 494 (appearing to agree with the Government's argument that § 1226(a) "does not require that a noncitizen be given notice and an opportunity to contest detention" at a pre-deprivation hearing).

Finally, those decisions cited by the petitioner that found constitutionally required pre-deprivation process failed to give appropriate weight toward either the bond hearing process or the government's interest in detaining aliens under the INA when performing the three-factor balancing test established by Mathews v. Eldridge, 424 U.S. 319 (1976). That balancing test considers: "(1) 'the private interest that will be affected by the official action'; (2) '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 (3) '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 v. Decker, 978 F.3d 842, 851 (2d Cir. 2020) (quoting Mathews, 424 U.S. at 335)).

Here, the respondents do not dispute the importance of the private interest, that is, the petitioner's liberty interest in being free from detention. That said, the petitioner was arrested and detained by ICE on December 19, 2025, and he had a bond hearing twenty days later, on January 8, 2026. As a result, the private interest at issue is substantially

less pronounced than the one described in Velasco Lopez, where the Second Circuit observed that the petitioner there had been detained under section 1226 for nearly fifteen months, including a period of “three and a half months before he received an opportunity to even apply for bail.” 978 F.3d at 851-52 & n.8. Nevertheless, because of the importance to the petitioner in his liberty, the first factor weighs in his favor.

Second, the risk of erroneous deprivation of the petitioner’s interest is low when considering existing procedures. As has been discussed above, the petitioner received a custody determination by the Acting SDDO immediately following his arrest, reflecting an exercise of ICE discretion under 8 U.S.C. § 1226. Following that determination, the petitioner requested, and received, a bond hearing before a neutral immigration judge on January 8, 2026, during which he was able to be heard on the propriety of his continued detention. And that decision from the immigration court is subject to further review, should the petitioner elect to seek it. In other words, the petitioner has been (and continues to be) the recipient of substantial procedural safeguards regarding his liberty, and those safeguards make the risk of erroneous deprivation extremely low. Cf. Rodriguez-Acurio v. Almodovar, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *29 (E.D.N.Y. Nov. 28, 2025) (“the complete lack of any pre- or post-deprivation notice and opportunity for Rodriguez-Acurio to be heard before a DHS officer or immigration judge gives rise to an extraordinarily high risk of erroneous deprivation”).

Moreover, to the extent that the petitioner (and district courts) have emphasized that a post-detention bond hearing does not serve to minimize the risk of erroneous deprivation, that argument is plainly wrong “because the risk of erroneous deprivation is

mitigated by the availability of a prompt post-deprivation hearing.” Nnebe v. Daus, 644 F.3d 147, 159 (2d Cir. 2011); see also Schneider v. Chandler, No. 16CV6560(DLC), 2018 WL 770395, at *5 (S.D.N.Y. Feb. 7, 2018) (“As for the second factor, the risk of erroneous deprivation and the probable value of additional procedures, courts consider both the significance of the pre- and post-deprivation process” (citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 547 n.12 (1985) (noting that the consideration of post-termination proceedings “is relevant to the necessary scope of pretermination procedures”)). Unlike in those cases in which the Government argued that an alien was not entitled to a bond hearing because they were detained under 8 U.S.C. § 1225, there is no dispute that a prompt post-deprivation hearing took place here, which under Second Circuit law, mitigates the risk of erroneous deprivation. This factor, therefore, favors the Government.

Finally, as to the Government’s interest, it cannot be reasonably disputed that the federal government has an important interest in immigration enforcement and public safety. See, e.g., Lopez v. Sessions, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (“the government’s interest in enforcing immigration laws, promoting border security, and deterring unlawful immigration cannot be ignored”). Indeed, the Second Circuit acknowledged as much in Velasco Lopez, observing that the importance of the Government’s interest in detention under section 1226 to ensure that an alien in removal proceedings does not flee and/or engage in criminal conduct while released “is well-established and not disputed.” 978 F.3d at 854; see also Black v. Almodovar, 156 F.4th 171, 175 (2d Cir. 2025) (Nardini, J., dissenting from denial of

rehearing en banc) (“when a court evaluates what due process requires in a matter relating to immigration, ‘it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature’” (quoting Landon v. Plasencia, 459 U.S. 21, 34 (1982))). As a result, the third factor, allowing the federal government discretion to detain aliens whom the Government should be detained weighs strongly in the Government’s favor.

On balance, proper application of the Mathews v. Eldridge balancing test leads to the conclusion that no additional process that is not already contemplated by the INA is constitutionally required because the petitioner was afforded, and availed himself of, a prompt hearing before a neutral immigration judge who adjudicated his claim for release from detention. See Mathews, 424 U.S. at 333 (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (internal quotation marks omitted)). Put simply, the petitioner is the beneficiary of substantial process concerning his detention, and neither the INA nor the Constitution requires that he receive anything more than what he has been (and is being) provided. Cf. Rodriguez v. Shanahan, 84 F. Supp. 3d 251, 266 (S.D.N.Y. 2015) (“Because Rodriguez is detained under Section 236(a), he must be provided with an individualized bond hearing. The failure to provide him one violates due process.”).

C. The INA Does Not Bar the Petitioner’s Arrest and Detention

As discussed above, the INA explicitly authorized the petitioner’s arrest and authorizes his continued detention during the pendency of his ongoing removal proceedings. Nevertheless, and notwithstanding that explicit authorization, the petitioner

contends that the INA implicitly prohibits the petitioner's arrest and detention because his arrest occurred "when [he] sought to appear at the Connecticut Superior Court in Manchester (Am. Pet., ¶65), in supposed violation of a common-law privilege, which supposedly was incorporated sub silentio into the INA at adoption. The petitioner's argument fails at every turn.

1. There is No Common-Law Privilege in Connecticut Against Federal Immigration Enforcement in and Around Courthouses

At the outset, and contrary to the petitioner's conclusory argument, the respondent notes that Connecticut common law does not privilege the petitioner's attendance at his own criminal court proceedings. See Gclodner v. Women's Ctr. of Se. Connecticut, Inc., 281 Conn. 819, 829 (2007) ("in Ryan v. Ebecke, 102 Conn. 12, 17, 128 A. 14 (1925), this court declined to afford immunity from suit to persons under bail who attend court to be tried on criminal charges"). The facts in Ryan are straightforward:

The defendant Hausaman, a resident of New Jersey, was arrested for violation of the motor vehicle law and arraigned before a justice of the peace in East Windsor, when he gave bail for his appearance and returned to New Jersey, and on July 26, 1924, came to Connecticut solely for the purpose of making his defense to the charge. While so attending court as an accused party defendant, he was served with process in the present action by delivery to him of a true and attested copy of the writ and complaint therein.

128 A. at 14.

In response, the defendant "claim[ed] to be exempt from the service of civil process," and the trial court rendered judgment for the defendant on that ground. Id. The plaintiff appealed, and the Connecticut Supreme Court reversed. That court acknowledged precedent extending immunity from civil process to parties and witnesses

in civil cases but declined to extend any such privilege to criminal defendants who attend court for purposes of defending against the criminal charges against them. Specifically, the Connecticut Supreme Court reasoned that public policy that warranted extending to those who voluntarily appeared at court in a civil proceeding to “aid[] the administration of justice” did not apply to criminal defendants who appear at their criminal proceedings involuntarily. Id. at 15; see also id. at 16 (“The analogy of the situation of a criminal defendant with a civil defendant, for the reasons above stated, seems to us to fail altogether.”).

Like the criminal defendant in Ryan, the petitioner here claims to have been entitled to a privilege while seeking to appear at his state-court criminal proceedings. But under the Connecticut Supreme Court’s decision in that case, there is no privilege from civil process under those circumstances, and the petitioner’s argument is without merit.

Setting aside the Connecticut-specific deficiencies of the petitioner’s argument, there has never been a generally common-law privilege, either when the INA was adopted or at any time before, resembling the one alleged by the petitioner – much less one that was “so well established” that the INA should be deemed to have included it. United States v. Craft, 535 U.S. 274, 288 (2002) (holding that, to conclude that Congress meant to incorporate a common-law rule, that rule must have been “so well established” that it can be “assume[d]” that Congress considered it). To the contrary, historical cases demonstrate only a much narrower common-law immunity from certain types of civil arrest, which itself rests on rationales that no longer exist.

As the First Circuit recognized in a challenge to ICE's prior courthouse arrest guidance, the "hoary common law privilege against civil arrests for parties and witnesses attending court proceedings" arose at a time when "a plaintiff in a civil action obtained personal jurisdiction over a defendant" by having that defendant arrested under a writ of capias ad respondendum. Ryan, 974 F.3d at 15. But parties and witnesses attending court proceedings in other matters were protected from such arrests by an immunity devised by the courts, "both to remove a disincentive for inhibiting parties and witnesses from coming forward (especially the risk of arrest in connection with another matter) and to ensure that arrests did not disrupt the orderly operation of the courts." Id. at 21.

However, as "arrests in civil suits fell largely out of fashion" and were replaced by service of summonses to obtain personal jurisdiction and initiate a civil action, courts "ruled that a similar privilege against service of a summons should extend to at least some parties and witnesses." Id. at 22. Thus, in cases now nearly a century old, the Supreme Court recognized an immunity from service of process in a private civil suit when the person to be served entered a jurisdiction solely to attend a court proceeding as a witness or party. See Lamb v. Schmitt, 285 U.S. 222, 225 (1932); Page Co. v. MacDonald, 261 U.S. 446, 446–47 (1923); Stewart v. Ramsay, 242 U.S. 128, 129 (1916); see also Ryan, 128 A. at 16 (distinguishing cases in which privilege from service of process was found for witnesses to a trial in a civil action (Chittenden v. Carter, 82 Conn. 585 (1909)) and for party defendants in a civil action (Wilson Sewing Mach. Co. v. Wilson, 51 Conn. 595 (1884)).

Both the privilege against case-initiating arrest and the privilege against service of process of a person attending court were extensions of the now-outdated principle that a state court's jurisdiction over a person rested on that person's physical presence. See Daimler AG v. Bauman, 571 U.S. 117, 125–26 (2014) (under rule of Pennoyer v. Neff, 95 U.S. 714, 727, 733 (1878), “a tribunal’s jurisdiction over persons reaches no farther than the geographic bounds of the forum,” and noting later abrogation of that doctrine). Because physical presence was historically the key to state-court personal jurisdiction, potential defendants had a strong incentive not to attend court proceedings in states in which potential plaintiffs might seek to serve them with civil process—just as they had the same incentive not to attend when they might be subject to arrest to subject them to a state court’s jurisdiction. See Stewart, 242 U.S. at 130-31 (“Witnesses would be chary of coming within our jurisdiction . . . if they might be punished with a lawsuit for displeasing parties by their testimony; and even parties in interest . . . might be deterred from the rightfully fearless assertion of a claim or the rightfully fearless assertion of a defense, if they were liable to be visited on the instant with writs from the defeated party.” (quotation marks omitted)).

That physical-presence requirement is now obsolete. In International Shoe Co. v. Washington, the Supreme Court announced the modern rule that a defendant need only have “certain minimum contacts” with a forum state to be sued there. 326 U.S. 310, 316 (1945). That decision broadly “increase[d] the ability of the state courts to obtain personal jurisdiction over nonresident defendants,” Shaffer v. Heitner, 433 U.S. 186, 204 (1977), and many states responded by enacting long-arm statutes enabling their courts to

exercise personal jurisdiction over out-of-state defendants, see Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 926 (2011); Rosenblatt v. American Cyanamid Co., 86 S. Ct. 1, 3 (1965) (Goldberg, J., in chambers). Thus, the rationale for immunity against service of process or arrest to initiate a civil action has disappeared, given that neither physical presence nor physical custody is required any longer for a court to obtain personal jurisdiction. With that rationale no longer present, the common-law rule that resulted from it no longer carries any force. See United States v. Denedo, 556 U.S. 904, 911 (2009) (noting change in common-law rule when rationale has been superseded); Kansas v. Colorado, 533 U.S. 1, 10 (2001) (rejecting common-law rule that rested on unsound distinction).

Accordingly, since the dawn of long-arm jurisdiction, judicial decisions have not applied the common-law privilege. To the contrary, courts have explained that when an out-of-jurisdiction defendant is subject to civil process under a forum state's long-arm statute, the privilege does not apply. In re Arthur Treacher's Franchise Litigation, 92 F.R.D. 398, 405 (E.D. Pa. 1981) (“it makes little sense to grant immunity to a person who can be served in his home jurisdiction under the forum’s long-arm statute” (quoting 4A Wright & Miller, *Federal Practice and Procedure: Civil* § 1076 (1969))); accord Gardner v. United States, 246 F. Supp. 1014, 1015 (S.D.N.Y. 1965) (“A nondomiciliary who could be served outside the state cannot claim immunity from service if he is served in New York, even if he is here voluntarily and in the aid of justice.”); Pavlo v. James, 437 F. Supp. 125, 127 (S.D.N.Y. 1977) (“the reason for the immunity—encouraging voluntary appearances—disappears if a defendant is otherwise subject to the extra-

territorial reach of [the forum state's long-arm statute]"). That same logic vitiates any argument that the privilege should apply against the petitioner's arrest by ICE. Aliens are subject to federal law enforcement jurisdiction or enforcement actions anywhere in the United States. See 8 U.S.C. § 1226(a) (providing for arrests "[o]n a warrant" without geographic limitation), id. § 1357 (providing for warrantless arrests without geographic limitation); 8 C.F.R. § 287.5(c) (similar). Given that, an alien does not "giv[e] up the 'safety' of one jurisdiction" when he attends a court proceeding in another state. Green, 305 F. Supp. at 128. Because the privilege is not needed "to shield an individual from service of process to encourage his or her travel to the forum state," it "should not be enlarged" beyond that reason. Northern Light Technology, Inc. v. Northern Lights Club, 236 F.3d 57, 62-63 (1st Cir. 2001).

2. The INA Cannot Be Read to Incorporate a Common-Law Privilege Against Courthouse Arrests

Because there was no "long-established and familiar common law rule protecting against civil arrests on behalf of the sovereign" at the time of the INA's enactment (or at any other time), the petitioner's assertion that the INA does not authorize such arrests at courthouses lacks merit. Ryan, 974 F.3d at 23. Congress is presumed to legislate against the background of the common law and to retain a common-law rule except when it evidently intends not to. Baker Botts LLP v. ASARCO LLC, 576 U.S. 121, 126 (2015); Samantar v. Yousuf, 560 U.S. 305, 320 & n.13 (2010). However, that presumption of nonderogation of the common law only applies to "long-established and familiar principles." Samantar, 560 U.S. at 320 n.13 (quotation marks omitted). When the

common-law rule is “not so well established,” it cannot displace “broad statutory language” enacted by Congress. Craft, 535 U.S. at 288.

As the authorities above show, by the time Congress established a comprehensive immigration-arrest statutory scheme in the INA, any privilege against extra-jurisdictional civil arrest was a historical artifact. And even when it was in force, it never applied to arrests by the government for law-enforcement purposes. Thus, at the very least, there is ambiguity as to the scope of the common-law principle at issue. See Netograph, 197 N.Y. at 379 (“Volumes of opinions have been written in which one can find all sorts of conflicting decisions and almost any dictum that one may be looking for” regarding privilege against courthouse service of summons.). The INA therefore cannot have codified the purported privilege. See Pasquantino, 544 U.S. at 364 (rejecting importation of a common-law rule where no case “clearly establishes” the rule’s applicability).

3. The INA Displaced any Common-Law Privilege to the Contrary

In the alternative, even assuming that there was a common-law privilege against arrest by a sovereign while attending criminal court proceedings, the INA displaced, rather than incorporated, it.

Because “Congress possesses plenary authority over immigration-related matters, it may freely displace or preempt state laws in respect to such matters.” Herrera-Inirio v. INS, 208 F.3d 299, 307 (1st Cir. 2000); see Textile Workers Union of America v. Lincoln Mills of Ala., 353 U.S. 448, 456 (1957) (when Congress enacts a policy, “by implication [it] reject[s] the common-law rule” to the contrary). Exercising that plenary authority, Congress in the INA spoke comprehensively to how the federal government will enforce

federal immigration law, thus supplanting any prior federal or state common law on the issue. Specifically, Congress addressed the authority of immigration authorities to effect arrests, allowing those arrests by and large without qualification. 8 U.S.C. §§ 1226 (“an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States”), 1357(a) (specifying numerous categories under which immigration authorities can make arrests). And when Congress intended limitations on ICE’s arrest authority, it was explicit, for instance limiting warrantless arrest authority to situations where officers had reason to believe an alien was violating immigration law and was “likely to escape before a warrant can be obtained for his arrest,” 8 U.S.C. § 1357(a)(2), or restricting warrantless entry near the border to “the premises of a farm or other outdoor agricultural operation,” *id.* § 1357(a)(3), (e). These provisions show that Congress knew how to limit DHS’s arrest authority and made conscious choices about when, where, and how to do so.

Finally, Congress amended the INA in 2006 to add 8 U.S.C. § 1229(e), which expressly acknowledges the practice of conducting immigration enforcement actions against aliens at courthouses.³ *Id.* § 1229(e)(1)-(2) (“where an [immigration] enforcement action leading to a removal proceeding was taken against an alien [a]t . . . a courthouse (or in connection with that appearance of that alien at a courthouse) if the alien is appearing in connection with [certain specified matters or circumstances]”).

³Thought of differently, “the 2006 adoption of section 1229(e) was not a Congressional abrogation of the incorporated privilege but an acknowledgement that no such privilege was ever incorporated into the statute.” *Afr. Communities Together v. Lyons*, 799 F. Supp. 3d 362, 392 (S.D.N.Y. 2025)

D. The Petitioner Does Not State a Plausible Tenth Amendment Violation

The petitioner's third claim for relief, which alleges that his arrest and detention violate the Tenth Amendment to the United States Constitution, also is unavailing, since the petitioner states only a vague and conclusory constitutional violation, and because neither the so-called "Courthouse Arrests Directive" nor the specific arrest of the petitioner in this case directs state officials to act or otherwise violates the Constitution's anti-commandeering doctrine.

Under the Tenth Amendment, the "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." Printz v. United States, 521 U.S. 898, 925 (1997); Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 470 (2018) (Tenth Amendment embodies an "anticommandeering doctrine" which "withhold[s] from Congress the power to issue orders directly to the States."). The Directive does not violate this command.

Courts have routinely held that directives and statutes, like the one at issue here, do not violate the Tenth Amendment if they do not commandeer the states. See, e.g., City of New York v. Beretta U.S.A. Corp., 524 F.3d 384, 396-97 (2d Cir. 2008) (the "critical inquiry with respect to the Tenth Amendment is whether the PLCAA commandeers the states," and holding that "[t]he PLCAA does not violate the Tenth Amendment" as it "does not commandeer any branch of state government because it imposes no affirmative duty of any kind on any of them") (quoting Connecticut v. Physicians Health Servs. of Conn., Inc., 287 F.3d 110, 122 (2d Cir. 2002)). Under anti-commandeering principles, the federal government also cannot prohibit state actors from

taking action. See States of New York v. Dep't of Justice, 343 F. Supp. 3d 213, 234 (S.D.N.Y. 2018) (“Whether Congress attempts to command affirmative action or impose a prohibition, ‘[t]he basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.’”) (quoting Murphy, 138 S. Ct. at 1478).

Here, the Directive does not implicate the Tenth Amendment at all because it does not order state courts, judicial employees, or state prosecutors to do anything, let alone make criminal defendants available for arrest or otherwise assist ICE’s enforcement efforts. Similarly, the petitioner cannot allege that any state actors were compelled to take or refrain from taking a specific action as a result of the Directive.⁴ As a result, the Directive raises no commandeering issues, and the petitioner’s claim to the contrary is without merit.

Moreover, to the extent that the petitioner contends that ICE has violated the Tenth Amendment because of alleged “interference with Connecticut’s administration of justice” (Am. Pet. ¶74), that argument ignores that “immigration is uniquely a matter of federal, not local, concern.” Herrera-Inirio, 208 F.3d at 307; see also Reno v. Flores, 507 U.S. 292, 305 (1993) (“[o]ver no conceivable subject is the legislative power of Congress more complete” than immigration). And the Supreme Court has explicitly overruled prior precedent considering as relevant “traditional governmental functions” and “‘fundamental’ elements of state sovereignty” in Tenth Amendment analyses. See Garcia

⁴The petitioner’s contention – “[o]n information and belief” – that the Directive and his arrest “required . . . state employees to expend state time and resources” (Am. Pet. ¶76) is belied by the text of the Directive itself, which plainly does not require state employees to do anything.

v. San Antonio Metro. Transit Auth., 469 U.S. 528, 548 (1985). “With rare exceptions” not identified here, “the Constitution does not carve out express elements of state sovereignty that Congress may not employ its delegated powers to displace.” Id. at 550. The Supreme Court has thus disclaimed “judicially created limitations on federal power.” Id. at 552. Accordingly, given that Congress possesses plenary authority over immigration-related powers, it can freely displace state laws in that area as well as a state’s desire to pursue criminal prosecutions before aliens are removed from the country.

E. The Petitioner is Not Entitled to Release Under Mapp v. Reno

In his fourth claim for relief, the petitioner seeks enlargement (i.e., bail) as a provisional remedy consistent with the Second Circuit’s analysis in Mapp v. Reno, 241 F.3d 221, 226 (2d Cir. 2001). (Am. Pet., ¶81.) In that case the court held “that the federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases.” Id. at 223.

But the power of a federal court to grant bail to a habeas petitioner “is a limited one, to be exercised in special cases only.” Mapp, 241 F.3d at 226. “The Second Circuit in Mapp explained that the ‘standard for bail pending habeas litigation is a difficult one to meet,’ and stated that a petitioner seeking bail ‘must demonstrate [1] that the habeas petition raises substantial claims and [2] that extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective.’” Diaz v. Bell, No. 21CV5452(LGS)(JLC), 2021 WL 4202567, at *1 (S.D.N.Y. Sept. 16, 2021) (quoting Mapp). The petitioner cannot satisfy either standard.

First, for the reasons set forth above, the petition in this case does not raise meritorious claims given that the petitioner is lawfully detained under the INA's discretionary detention provision and the petitioner already has had a bond hearing before the immigration court.

Second, and perhaps more importantly for purposes of the remedy the petitioner has requested, the petitioner cannot establish the types of extraordinary circumstances requiring enlargement "to make the habeas remedy effective." Mapp, 241 F.3d at 230; see also id. ("Assuming . . . that the district court was correct with respect to the existence of a substantial claim for relief, and arguendo, that the circumstances of Mapp's habeas petition were, in some respect, "extraordinary," the grant of bail in this case must nevertheless be vacated. This is because the district court neglected to articulate why its grant of bail was "necessary to make the habeas remedy effective" in this case.").

The petitioner cannot explain how his release from ICE custody as a provisional remedy is necessary to make the habeas remedy effective in the context of his petition. Contrary to some other habeas cases in which provisional release was granted, the petition in this case does not present circumstances like in cases where continued incarceration pending litigation over COVID-19-related habeas petitions risked further spread of COVID-19, and "were that to happen, the habeas remedy would be rendered ineffective," or where "a sentence was so short that it was likely to end before a habeas petition was resolved, thereby, again, rendering the habeas remedy ineffective."

Tompkins v. Pullen, Case No. 22-cv-339 (D. Conn.), ECF 13, at 3. Here, the habeas

remedy is effective to test the legality of the petitioner's detention, and he therefore cannot satisfy Mapp's stringent standard.

IV. Conclusion

For the foregoing reasons, the habeas petition should be denied.

Respectfully submitted,

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