

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MAURICIO FABIAN NARANJO CAMACHO

Petitioner

PAM BONDI, Attorney General
of the United States,

KRISTI NOEM, Secretary of the Department
of Homeland Security,

TODD M. LYONS, Acting Director, United States
Immigration and Customs Enforcement;

JOHN TSOUKARIS, Field Office Director
of the Immigration and Customs Enforcement
and Removal Operations Newark Field Office,

LUIS SOTO, Director of the Elizabeth Detention
Center Detention Facility,

Respondents

Case No.

A 

EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS


ORAL ARGUMENT REQUESTED

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 & APPLICATION
FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

1. Petitioner Mauricio Fabian Naranjo Camacho is an Ecuadorian forty-eight-year-old man, a husband and father of six children, who is being detained by Respondents at the Elizabeth Detention Center (EDC) in New Jersey.
2. He is currently unlawfully detained after the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) erroneously concluded that

Petitioner is subject to mandatory detention.

3. Prior to this incident, he has never been arrested.
4. Mr. Naranjo entered the United States on December 13, 2022, along with his wife and three daughters, ages 29, 20 and 15.
5. The family fled Ecuador due to serious threats from the criminal group  Mauricio worked as a transporter, which put him at risk of many crimes including, extortion, robbery, kidnapping and assault and even murder, if he did not cede the gang's demands.
6. A local New Jersey non-profit organization assisted the family in preparing and filing their asylum application.
7. On December 17, 2025, the family attended a scheduled ICE appointment in New Jersey at 970 Broad Street, Newark NJ. All four family members appeared as instructed.
8. During the appointment, Mr. Naranjo was detained.
9. Upon information and belief, the ICE officer arrested the Mr. Naranjo *without a Notice to Appear (NTA), an arrest warrant, and without an individualized custody determination taking into factors such as flight risk or dangerousness.*
10. Later ICE transported him to the EDC. *See ICE Detainee Locator Printout, showing that the petitioner is being held at this location.*
11. Counsel does not know whether he has yet been served with an NTA.
12. Petitioner is in urgent need of a gall bladder operation, and he is currently in great pain.
13. Mr. Naranjo is not receiving proper medical care at the EDC nor will he, since his

condition should only be treated at an emergency room or by a surgeon, not in a prison infirmary. He is not receiving his two required medications either, which will put him in medical danger in the days to come.

14. Mr. Naranjo's because he has been deprived of his freedom without due process of law his rights have been violated under the Fifth Amendment.
15. We believe that Petitioner has been charged with having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). Based on this charge, in Mr. Naranjo's imminent removal proceedings, DHS will deny his from immigration custody.
16. DHS's new policy issued on July 8, 2025, instructs all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who initially entered the United States without inspection—to be subject to mandatory detention under 28 U.S.C. § 1225(b)(2).
17. This position has now been officially sanctioned and made binding on the nation's immigration officers and immigration judges (IJ's) in the *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
18. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act's (INA) Section 1225(b)(2)(A) which does not apply to individuals like Mr. Naranjo who previously entered and now reside in the United States.
19. Instead, such individuals *are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond*. That statute expressly applies to people who, like Petitioner, are residing in the United States but are charged as inadmissible for having initially entered the United States without inspection.

20. For nearly three decades, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). The government's novel position would mandate the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case.
21. It is no surprise therefore that this novel interpretation *has been squarely rejected by nearly every federal court to address this issue*, including in this district, in at least four cases, if not more, See *Polat v. Soto*, Civil Action No. 2:25-cv-16893, 2025 LX 543541 (D.N.J. Dec. 17, 2025), *Maldonado v. Cabezas*, Civil Action No. 25-13004, 2025 LX 448829 (D.N.J. Oct. 23, 2025), *Soto v. Soto*, No. 25-cv-16200, 2025 LX 420334 (D.N.J. Oct. 22, 2025), *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036 (D.N.J. Sep. 26, 2025).
22. In this district, about one hundred such cases have been resolved and in no case has a federal judge in NJ concluded that the July 2025 policy is correct -- that mandatory detention, with no possible bond hearing, is required for all noncitizens - regardless of whether they were living in the United States before being detained.
23. Rather, this Court's esteemed colleagues have uniformly held that a noncitizen who has been in the United States for an extended period must be released (in about twenty percent of the cases) or given a bond hearing (in about 80 percent of the cases). *Y.Z. v. Soto*, No. 2:25-cv-17841 (MEF), 2025 LX 566502, at *4-5 (D.N.J. Dec. 12, 2025).

More judges nationally are releasing people detained under this policy every passing month.

24. Judges in this Court's sister circuit, the Second Circuit, have also granted release in numerous cases for the same or similar constitutional violations as committed in the case at bar.
25. In the Second Circuit, many judges ordered the immediate release in similar cases, finding that the only appropriate remedy for these DHS violations was immediate release (rather than a "remand" to the immigration judge for a bond determination). See also *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Tumba Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025); *Guzman Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025).
26. Some of these decisions were predicated on recent documented patterns of constitutional and statutory violations by ICE when arresting immigrants throughout 2025. See *Barco Mercado v. Francis et al* 25-cv-06582-LAK (S.D.N.Y., November 26, 2025. *Sandoval-Abzun v. Genalo et al*, 25-cv- 9589-RER (November 25, 2025, S.D.N.Y) and *Cunas Hurtado v. Genalo* 25-cv-09172-LAK (November 25, 2025, S.D.N.Y).
27. Some of these rulings were decided only very recently in EDNY. See *Gopie v. Lyons*, No. 25-CV-05229 (SJB), 2025 WL 3167130, (E.D.N.Y. Nov. 13, 2025); also *Hinestroza Arango v. Genalo*-RER (December 15, 2025, E.D.N.Y) ECF text decision, written decision pending, and *Tenezaca Pucha v. Genalo et al* 25-cv-06905-SJB (EDNY December 17, 2025) (Text ECF Order: Written decision pending).

28. Court after court has held, that the §1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead, §1226(a) plainly applies. Those courts all rejected the government's argument that exhaustion is a barrier to habeas relief.
29. This Court should also grant Mr. Naranjo's petition and order Respondents to immediately release him.
30. Petitioner is not challenging any discretionary denial of bond; he is challenging the immigration authorities' legal determination that Petitioner is not eligible for bond under § 1226(a) in the first place.

JURISDICTION

31. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Elizabeth Detention Center in Elizabeth, New Jersey.
32. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
33. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.
34. Federal district courts retain jurisdiction to review the legality of executive detention, including immigration custody and may grant habeas under 28 U.S.C. § 2241(c)(3) if the noncitizen is in detention in violation of the treaties and laws of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 687, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Demore v. Kim*, 538 U.S. 510, 517, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003).

VENUE

35. Venue is proper in the District of New Jersey under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is detained at the direction of, and is in the immediate custody of, Respondent Tsoukaris. *See Meck v. Commanding Officer, Valley Forge Gen. Hosp.*, 452 F.2d 758 (3d Cir. 1971).
36. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the District of New Jersey.

REQUIREMENTS OF 28 U.S.C. § 2243

37. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
38. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
39. Habeas corpus is “perhaps the most important writ known to the constitutional law affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

THE PARTIES

40. MAURICIO FABIAN NARANJO CAMACHO is a citizen of Ecuador who has been in NJ immigration detention since December 17, 2025.
41. Respondent JOHN TSOUKARIS is the Acting Director of the Newark Field Office of ICE's Enforcement and Removal Operations division. As such, Tsoukaris is Petitioner's immediate custodian and is responsible for his detention and removal. He is named in his official capacity.
42. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
43. Respondent DEPARTMENT OF HOMELAND SECURITY (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
44. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
45. Respondent, LUIS SOTO, is the Director of the Elizabeth Detention Center and is the warden of the facility holding Mr. Naranjo.

LEGAL FRAMEWORK

Petitioner's Detention Violates His Due Process Rights Because He Was Arrested Without a Properly Issued or Executed Warrant of Arrest, Notice to Appear, No Individualized Custody Determination Prior to or Contemporaneous With His Detention.

46. The Fifth Amendment's Due Process Clause prevents the government from depriving any person of life, liberty, or property, without due process of law. *U.S. Const Amend. V.*
47. The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. *Maldonado v. Cabezas*, Civil Action No. 25-13004, 2025 LX 448829, at *11-12 (D.N.J. Oct. 23, 2025) citing *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).
48. The Court of Appeals for the Third Circuit has developed a three-factor test to determine the process due to noncitizens facing immigration detention. The three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (3d Cir. 1976). It evaluates the constitutional adequacy of procedures by weighing three factors: (1) the private interest affected by the government action, (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value of additional or substitute procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens of additional or substitute procedural requirements. *Guerrero-Sanchez v. Warden York City. Prison*, 905 F.3d 208 (3d Cir. 2018) and *B.C. v. AG United States*, 12 F.4th 306 (3d Cir. 2021).
49. This circuit has consistently applied this test to assess due process requirements in immigration detention cases, balancing the individual's liberty interest against

the government's administrative and fiscal concerns. This approach ensures that procedural protections are tailored to the specific circumstances of prolonged detention.

The first factor of the Matthews test has been met because Respondents unlawfully deprived Petitioner of his liberty.

50. As to the first element, the private interest at stake is the freedom from imprisonment, this is the most elemental liberty interest. *Hamdi v. Rumsfeld*, 542 U.S. at 529. S. Ct. 2633 (2004). This factor heavily weighs in favor of the Petitioner who has been unlawfully deprived from his liberty by the government.
51. DHS was obligated under §1226(a) to conduct an individualized custody determination prior to detaining the Petitioner. DHS has discretion to detain noncitizens suspected of being removable but before exercising such discretion, the DHS must make an individualized custody determination. In numerous cases, judges have interpreted the statute this way: before or contemporaneous with detaining a noncitizen, there must be a custody determination by ICE. See *Polat v. Soto*; *Maldonado v. Cabezas*; *Soto v. Soto*; and *Zumba v. Bondi*.
52. For a very recent detailed discussion of the custody determination that must be made by an arresting ICE officer, see *Gopie v. Lyons*, No. 25-CV-05229 (SJB), 2025 WL 3167130, (E.D.N.Y. Nov. 13, 2025); *Clarke v. Nassau Cnty. Corr. Ctr. et al*, No. 25-CV-06773 (GRB), ECF No. 7 (E.D.N.Y. Dec. 9, 2025).
53. In *Polat v. Soto*, the Petitioner was residing in the United States since 2022 after entering the US through the border, was apprehended and released on parole after the issuance of an expedited removal order. Given the nonservice of the removal order and

the conditions of his arrest, this district court ordered his immediate release to restore him to the position he would have occupied had DHS adhered to the law.

54. In *Maldonado v. Cabezas*, this district court held that Petitioner's detention without an individualized determination as to flight risk or dangerousness violated due process, and a subsequent bond hearing did not cure this constitutional violation.
55. Similarly, in *Soto v. Soto*, DHS made several procedural errors initiating removal proceedings, including issuing a defective notice to appear that was never properly served, as required by 8 U.S.C. § 1229(a)(1), and reflected an incorrect address at a facility where he has never been housed. This district court ordered immediate release and enjoined the Respondents from rearresting Mr. Soto under mandatory detention provisions.
56. Also, in *Zumba v. Bondi*, this district court granted the habeas petition, ordered petitioner's release within 24 hours, permanently enjoined respondents from detaining her under §1225, and temporarily enjoined them from re-arresting her under §1226(a) for 14 days to allow her to return home.
57. Multiple courts across the country have repeatedly ordered immediate release - amongst them, the Southern and Eastern Districts of New York - due to the Respondent's unlawful detention practices, which has been persistent.
58. In New York ICE officers are required to issue a Notice to Appear, an Arrest Warrant and a Custody Determination document prior to or when contemporaneously arresting someone. See *Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 LX 542178 (S.D.N.Y. Nov. 26, 2025) (stating that "...in habeas proceedings concerning "executive detention orders," courts must conduct "the most searching review" to

ensure the legality of the detention, "which occur[s] without the procedural protections required in courts of law." See also Qunjie Yao v. Almodovar, 2025 LX 502812 (S.D.N.Y. Dec. 17, 2025) (When ICE conceded that it detained Yao as a matter of reflex, the Court found that ICE's discretion-free detention of Yao abridged his rights under § 1226 and violated due process); Hurtado v. Genalo, No. 25-cv-9172 (LAK), 2025 LX 547680 (S.D.N.Y. Dec. 2, 2025) ("As in Barco Mercado, detaining Mr. Cunas Hurtado pursuant to the wrong statute without any process violated his due process rights. Granting Mr. Cunas Hurtado a bond hearing would fail to remedy this constitutional violation and, moreover, would be futile").

59. The same relief granted in those cases is warranted for Mr. Naranjo as he was unlawfully detained and his due process rights were violated. In cases like this, the federal courts have the power to declare executive actions unconstitutional through judicial review of executive detention.

The second factor of the Matthews test is also met because the risk of erroneous deprivation of liberty is certain as Petitioner is being subjected to mandatory detention.

60. The second factor of the Matthews test is also met where Respondents are subjecting noncitizens to mandatory detention when they would have qualified for bond under § 1226(a) and prior to *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
61. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. §1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes

are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

62. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).
63. Third, the INA also provides for detention of noncitizens who have been ordered removed, *see* 8 U.S.C. § 1231(a)–(b).
64. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the *Laken Riley Act*, Pub. L. No. 119–1, 139 Stat. 3 (2025).
65. Following the enactment of *IIRIRA*, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that “[d]espite being applicants for admission, [noncitizens] 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.”)
66. Thus, in the decades that followed, the vast majority of people who entered without inspection and were placed in removal proceedings received bond hearings, unless

their criminal history rendered them ineligible. That practice was consistent with decades of prior practice, in which noncitizens who were not deemed “arriving,” and were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

67. However, on July 8, 2025, ICE, in coordination with DOJ, announced a new policy that rejected well-established jurisprudence and reversed decades of practice. The new policy, entitled “*Interim Guidance Regarding Detention Authority for Applicants for Admission*,”¹ claims that all persons who entered the United States without inspection are subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.
68. The BIA has since adopted that position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision mandates the detention, without a bond hearing in immigration court, of millions of noncitizens who have lived in the United States for years following their entry without inspection.
69. ICE and the EOIR have adopted this position even though federal courts have rejected

¹ Policy available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> For example, after IJs in the Tacoma, Washington immigration courts stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp.3d 1239 (W.D.Wash. Apr. 24, 2025).

this interpretation.

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70. Since July, nearly every district court to consider the issue has rejected the ill-advised BIA and DOJ position and granted habeas relief in hundreds of legal challenges. In this district alone, judges in over one hundred cases have granted habeas relief to immigrants who have been present in the United States for any period prior to their arrest and who were not seeking admission at the U.S. border. See *Y.Z. v. Soto* 2:25-cv-17841 (MEF), 2025 LX 566502, at *4-5 (D.N.J. Dec. 12, 2025).
71. The DHS's and DOJ's interpretation defies the INA. As the courts repeatedly rule, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
72. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of all noncitizens[.]”
73. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).
74. Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
75. Congress intended for § 1226 to govern the detention on noncitizens who entered the

U.S. without inspection. Congress most recently expressed this understanding earlier this year in the *Laken Riley Act*. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes would render this recently amended section superfluous.

76. If Congress intended or understood § 1225 to govern the detention of noncitizens like Petitioner, who were apprehended years after entering the United States, it would have placed these amendments within the detention provisions in § 1225, not § 1226.
77. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject *all persons* present in the United States after an unlawful entry to mandatory detention and thereby impose wholesale immigration detention and sweep millions of noncitizens into mass incarceration. § 1225(b). *See H.R. Rep. No. 104-469*, pt. 1, at 157–58, 228–29 (1996), *H.R. Rep. No. 104-828*, at 209 (1996) (Conf. Rep.).
78. This is not a novel interpretation of the INA. It has been *Respondents'* own

understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course two months ago in a policy ICE issued “in coordination with the Department of Justice.” *See supra* n.1.

79. When *IIRIRA* passed, the agency drafted new regulations that provided: “[a]liens 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.” *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).
80. In fact, as recently as August 4, 2025 the Attorney General designated a prior BIA decision for publication in which the BIA reviewed the bond eligibility of a noncitizen who unlawfully entered the United States under §1226(a). *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025). “The longstanding practice of the government can inform a court’s determination of ‘what the law is.’” *Loper Bright*, 603 U.S. at 385-86.
81. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

The third factor of the Matthews test is satisfied because despite the government’s interests in ensuring securing attendance at removal proceedings and preventing danger to the community, the custodial determination rule protects noncitizens’ rights.

82. The courts have found that in cases where the noncitizens are not a danger to the community or a flight risk, this third element militates for immediate release.

PETITIONERS EXHAUSTION OF ADMINISTRATIVE REMEDIES IS EXCUSED
BECAUSE OF THE FUTILITY OF PURSUING ILLUSORY REMEDIES
AND DHS'S DUE PROCESS AND STATUTORY VIOLATIONS.

83. The plethora of cases cited above do not require that a Petitioner exhaust administrative remedies to petition a court. Exhaustion is a prudential, not a jurisdictional or statutory requirement.
84. For example, courts have not required exhaustion when “(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.” See *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), as amended (July 24, 2003); see, e.g., *J.U. v. Maldonado*, 25-CV-04836 2025 WL 2772765, at *4 (E.D.N.Y. Sep. 29, 2025); *Lopez Benitez v. Francis*, 25-CV-5937 (DEH), 2025 WL 2371588, at *14 (S.D.N.Y. Aug. 13, 2025).
85. See also *Guzman Cardenas v. Almodovar*, 25-cv-09169-JMF (For reasons ... explained in *Tumba Huamani* and *Lopez Benitez*, to accept that argument [that exhaustion is required] *is to ignore the gravamen of Petitioner’s claim, which is that the Government violated her due process rights by detaining her without exercising any discretion in the first instance. See Tumba Huamani*, 2025 WL 3079014, at *7-8; *Lopez Benitez*, 2025 WL 2371588, at *14. “Given the nature of the constitutional violation” alleged here, “any post-deprivation review by an immigration judge would be inadequate. This is particularly so given that detention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded.” Cited by *Lopez Benitez*, 2025 WL 2371588, at *14 (cleaned up); see also,

e.g., *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025). "

86. For a full exposition on the exhaustion issue, see the recent EDNY decision in *Artiga v. Genalo* 25-cv-05208 (OEM) E.D.N.Y. October 5, 2025).
87. As in *Artiga*, Mr. Naranjo here insists that exhaustion of his administrative remedies should not be required because (1) it would provide no genuine opportunity for adequate relief, (2) irreparable injury may occur without immediate judicial relief, (3) it would be futile, and (4) petitioner raises substantial constitutional questions. *Ibid.*
88. Since both ICE officers and immigration judges are, prohibited from granting discretionary parole or bond, respectively under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept 5, 2025), a motion for bond before an IJ or a parole request to the ICE deportation officer, would be completely useless.
89. Consistent with the *Artiga* court analysis, Mr. Naranjo posits that “the substantial constitutional questions that he raises as to his liberty and due process rights also forecloses the need to exhaust administrative remedies in this action... Petitioner’s allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively.” *Ibid.*
90. Here, there are no administrative remedies available that could provide Mr. Naranjo with the relief he seeks. See *Beharry*, 329 F.3d at 62; J.U. 2025 WL 2772765, at *4 (*finding administrative remedies excused where petitioner raised constitutional question as to his unlawful detention and there was no administrative remedy available where ICE had not made an initial decision to detain as is required for noncitizens detained under § 1226(a)*). See *Artiga v. Genalo* 25-cv-05208 (OEM) E.D.N.Y. October 5, 2025).

91. The *Gopie* court explains this rationale well:

[A]bond hearing before an immigration judge is a “redetermination” of custody—it assumes that a valid custody determination was made in the first instance. Here, *Gopie*’s “custody” determination was made after-the-fact. That alone makes it invalid. See *Kelly*, 2025 WL 2381591, at *3 (“Such hearings, however, are provided for the purpose of custody re-determination—a hearing held by an immigration judge after ICE makes its initial decision to detain. Such a 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.”) (quotations omitted); *Lopez Benitez*, 2025 WL 2371588, at * 13 (same); *Huamani*, 2025 WL 3079014, at *8 (same). Respondents’ declaration tells the Court nothing about this initial determination—even as to who made it, or the basis for it. There is no evidence, in other words, to conclude that even the after-the-fact determination comported with due process. *Gopie is not required to exhaust a process that was deficient from the outset.* *Gopie v. Lyons*, No. 25-CV-05229 (SJB), 2025 WL 3167130, (E.D.N.Y. Nov. 13, 2025) at 7 (underline added).

THE FACTS

92. Petitioner has resided in the United States for 3 years. He lives in Plainfield, NJ with his wife and their two children.
93. If and when ICE places Petitioner in removal proceedings, it will allege that he is removable under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without inspection.
94. For relief from removal, he is eligible for an asylum claim because of the persecution suffered in Ecuador.
95. Upon information and belief, following Petitioner’s arrest and transfer to the EDC, DHS issued a unilateral, non-participatory summary custody determination to continue Petitioner’s detention. No input was taken from Mr. Naranjo as to danger or flight risk, nor was any documented assessment made.
96. ICE arrested and continues to detain Mr. Naranjo without an opportunity to post bond

or be released on any other conditions.

97. As a result, his detention will continue indefinitely after several violations of the federal statute, as and Mr. Naranjo's due process rights, were irreversibly committed.
98. Petitioner will remain in detention and without any relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his wife, children and community while he defends his deportation case.
99. Any new appeal to the BIA is futile. DHS's new policy was issued "in coordination with" the Department of Justice, which oversees the immigration courts. The BIA's precedential decision in *Yajure Hurtado* binds future BIA panels and all IJs. In the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Motion to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D.Wash. June 6, 2025), Dkt. 49 at 27–31.
100. Petitioner is also detained under dire conditions of confinement as he requires an immediate operation of his gallbladder.
101. Petitioner and his family are gravely concerned that his conditions would deteriorate further given the recent death of a noncitizen at the Elizabeth Detention Center Detention Facility in opaque circumstances.²

CLAIMS FOR RELIEF

² News Article available at: <https://www.nytimes.com/2025/12/19/nyregion/ice-detainee-death-newark.html>

COUNT I: Violation of the INA

102. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
103. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.
104. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II: Violation of Due Process

105. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.
106. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).
107. Petitioner has a fundamental interest in liberty and being free from official restraint. The government’s detention of Petitioner without an individualized custody determination violates his right to due process and the only relief available to him is his release. Similar to the case in *Polat v. Soto*, here habeas relief cannot

“fully remedy the indignities associated with DHS's detention, misrepresentations, and mishandling of Petitioner’s delicate state of health or the opacity surrounding Petitioner's location.” But an order from this writ allows the Court to restore Petitioner to the position he would have occupied had DHS adhered to law in the first instance.

COUNT III: Violation of the Bond Regulations

108. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.
109. In 1997, after Congress amended the INA through *IIRIRA*, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “*Apprehension, Custody, and Detention of [Noncitizens]*,” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
110. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.
111. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
- 112.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order Respondents to immediately produce forthwith the following documents:
I-200 Warrant of Arrest, Notice of Custody Determination, and Notice to Appear, for the Court and Petitioner.
- c. Issue a Temporary restraining order preventing Respondent from transferring Petitioner outside of the district of New Jersey.
- d. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately given that this is the appropriate relief given the Respondent's unlawful detention of Petitioner in violation of 8 U.S.C. §1226(a);
- e. Issue an order enjoining the Respondents from adding alternatives to detention, or require Petitioner to submit to any alternatives to detention (i.e., ankle monitor), unless a request to the appropriate Court and receipt of proper judicial approval from that Court is given in advance of such infringement;
- f. Issue an order enjoining Respondents from rearresting or otherwise detaining Petitioner under 8 U.S.C. § 1225(b)(2);
- g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- h. Grant any other and further relief that this Court deems just and proper.

Dated: December 21, 2025

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