UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

H.E.T.R., *Petitioner*, v. **LUIS SOTO**, *in his official capacity as* Director of the Delaney Hall Detention Facility; **JOHN TSOUKARIS**, *in his official capacity as* Field Office Director of Newark, Immigration and Customs Enforcement; **TODD M. LYONS**, *in his official capacity as* Senior Official Performing the Duties of the Director, Immigration and Customs Enforcement; **KRISTI NOEM**, *in her official capacity as* Secretary, U.S. Department of Homeland Security; **PAMELA BONDI**, *in her official capacity as* U.S. Attorney General, *Respondents*.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner H.E.T.R. brings this petition for a writ of habeas corpus ordering that he be released immediately by Respondents or, in the alternative, that they provide him with a bond hearing under 8 U.S.C. § 1226(a) within seven days.

2. Petitioner has been unlawfully detained by Respondents for over two months at the Delaney Hall Detention Facility ("Delaney Hall") in Newark, New Jersey, despite having no criminal history.

3. As detailed below, Petitioner's arrest involved egregious violations of his Fourth Amendment and Due Process rights. Moreover, for the past two months Respondents have failed to provide Petitioner with treatment and medication for his depression and anxiety

symptoms and adequate medical care for the severe pain in his right hip. As a result, Petitioner is suffering from anxiety attacks in Delaney Hall.

4. Respondents continue to detain Petitioner pursuant to policies of the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") that have repeatedly been held to be unlawful by dozens of district courts across the country.

5. Specifically, on July 8, 2025 DHS issued a new policy that contravened decades of settled case law and instructed all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. The new policy was later affirmed in a September 5, 2025, decision from the Board of Immigration Appeals ("BIA" or "Board"), binding on all immigration judges ("IJs"), holding that an IJ has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 227–28 (B.I.A. 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *Id.* at 229.

7. Petitioner is charged with having entered the United States without admission or inspection and, based on this charge (not made until over a month after Petitioner's arrest), DHS is detaining Petitioner pursuant to the July 8 policy and *Yajure Hurtado*.

8. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who are alleged to have previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on

conditional parole or bond. Section 1226(a) expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

9. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Indeed, every court to consider this issue in this district has concluded that § 1225(b)(2)(A) does not apply to other similarly situated petitioners and have declined to defer to the BIA's interpretation in *Yajure Hurtado*. *See generally Rivera Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496, at *6-7 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Soto et. al*, No. 25-cv-16200, 2025 WL 2976572, at *9 (D.N.J. Oct. 22, 2025); *Lucero v. Soto,* No. 25-16737 (MCA), 2025 WL 3240895, at *2 (D.N.J. Nov. 20, 2025); *Valerio v. Joyce*, No. 25-cv-17225 (ZNQ), 2025 WL 3251445, at *3 (D.N.J. Nov. 21, 2025); *Patel v. Soto*, No. 25-cv-17096 (ZNQ), 2025 WL 3485716, at *1 (D.N.J. Dec. 4, 2025).

10. Courts in this district are not alone—dozens of courts across the country have reached the same conclusion. *See infra* ¶ 55.

11. In addition, Petitioner was detained without any individualized review of the necessity of that detention, as required by § 1226(a) and due process, and there is no valid basis for his ongoing immigration detention as he does not pose a flight risk or danger. Instead, he has no criminal history whatsoever, and prior to his sudden arrest by ICE had been living in Brooklyn, New York since he was a child and working at the same bodega in Coney Island for years. Due to Respondents' unlawful actions, however, he has been separated from his family, has not been provided with his medication or adequate medical care, and is suffering in detention.

12. Moreover, and in the alternative, Petitioner is also entitled to a bond hearing under § 1226(a) as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, where the court held that Bond Denial Class members are detained under § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners) ("*Bautista I*"); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment) ("*Bautista II*"); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025) (issuing a final judgment with respect to the same) ("*Bautista III*").

13. Accordingly, Petitioner seeks a writ of habeas corpus ordering that he be released immediately by Respondents or, in the alternative, that they provide him with a bond hearing under § 1226(a) within seven days.

JURISDICTION

14. Petitioner is in the physical custody of Respondents. Petitioner is detained at Delaney Hall in Newark, New Jersey.

15. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause).

16. 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.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Demirel v. Federal Detention Center Philadelphia*, No. 25-5488, 2025 WL 3218243, at *3-4 (E.D. Pa. Nov. 18, 2025); *Burns v. Cicchi*, 702 F. Supp. 2d 281, 285-86 (D.N.J. 2010). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and BIA lack jurisdiction to entertain constitutional challenges. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 667 (D.N.J. 2003); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345-46 (B.I.A. 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute). Moreover, habeas petitioners need not exhaust administrative remedies where, as here, the issue presented involves only statutory construction. *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012); *Demirel*, 2025 WL 3218243, at *3 (holding the "claims turn[ed] on how INA Sections 235 and 236 are construed").

VENUE

18. Venue is proper in the District of New Jersey because Petitioner is presently in the custody of Respondents in this District, at Delaney Hall, which is located at 451 Doremus Avenue, Newark, NJ 07105. *See* 28 U.S.C. §§ 1391, 2241(c), 2242, 2243; *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

REQUIREMENTS OF 28 U.S.C. § 2243

19. 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. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

20. 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).

PARTIES

21. Petitioner H.E.T.R. is alleged to be a citizen of Guatemala who has been in immigration detention since October 16, 2025. After arresting Petitioner in Brooklyn, New York, ICE transferred him to civil immigration detention. He remains detained at Delaney Hall in Newark, New Jersey.

22. Respondent Luis Soto is named in his official capacity as the Director of Delaney Hall. He is an employee of The Geo Group, Inc., which partners with ICE to accept immigrant detainees at Delaney Hall. His office is located at 451 Doremus Ave, Newark, NJ 07105.

23. Respondent John Tsoukaris is named in his official capacity as the Director of the Newark Field Office of ICE's Enforcement and Removal Operations division. In this capacity, he is responsible for the administration of immigration laws and execution of detention and removal determinations and, as such, is an immediate custodian of Petitioner. Respondent Tsoukaris's office is located at 970 Broad St., Newark, NJ, 07102.

24. Respondent Todd M. Lyons is named in his official capacity as Senior Official Performing the Duties of the Director, ICE. In this capacity, he is responsible for the administration of immigration laws, he routinely transacts business in the District of New Jersey, he supervises Respondent Tsoukaris, and he is legally responsible for the pursuit of Petitioner's

detention. Respondent Lyons's office is located at the United States Immigration and Customs Enforcement, 500 12th St SW Washington, DC 20536.

25. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In this capacity, she is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the District of New Jersey, she supervises Respondent Tsoukaris, and she is legally responsible for the pursuit of Petitioner's detention. Respondent Noem's office is located at the United States Department of Homeland Security, 2801 Nebraska Avenue NW, Washington, D.C. 20528.

26. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey and is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

STATEMENT OF FACTS

27. Petitioner is a long-time resident of Brooklyn, New York with no criminal history. Ex. A, Pet.'s Decl. ¶ 2.

28. On October 16, 2025, weeks before his 25th birthday, Petitioner was walking to the subway to go to work when he was intercepted by an unmarked van in the crosswalk. *Id.* ¶ 7. Not thinking anything of it, he continued walking around it to get to the subway. *Id.* However, several agents in unmarked black vests jumped out of one of the vans and ordered him to stop.

Id. ¶¶ 8-9. They surrounded him, blocking his path so he could not leave while being questioned. *Id.* ¶¶ 9-10.

29. An agent demanded Petitioner provide an identification against his will, implying that he would be punished for refusing. When Petitioner provided his New York City identification card, agents asked if he was an immigrant because he only had a municipal ID, and ran his name through their system. *Id.* ¶ 12. Only then did the agents identify themselves as ICE and inform Petitioner that he was under arrest because he was an immigrant. *Id.* At no point during this interaction prior to arresting him did agents identify themselves, inform Petitioner that he could leave, accuse him of a crime, explain the reason for their stop, or provide him with any paperwork. *Id.* ¶ 15.

30. Petitioner was taken to 26 Federal Plaza where he refused to answer any questions without an attorney. *Id.* ¶ 18. He was then taken to Delaney Hall, where he has remained since October 16, 2025. *Id.* DHS did not file a Notice to Appear (NTA) or I-830 until November 20, 2025. The I-830 is dated October 20, 2025, and incorrectly states that Petitioner was detained at Delaney Hall on September 30, 2025. *See* Ex. E, Form I-830; Ex. B, Decl. of Hannah Rosner ¶ 4. The NTA filed as part of the same PDF document states Petitioner is in fact at the Orange County Jail and that his case would be heard at the Varick Street Immigration Court, with an initial hearing allegedly scheduled for February 26, 2026. *See* Ex. D, Notice to Appear; Ex. B, Decl. of Hannah Rosner ¶ 4. The certificate of service on the NTA is dated November 20, 2025, although Petitioner only received paperwork from ICE on the day he was detained. Ex. A, Pet.'s Decl. ¶ 18; Ex. B, Decl. of Hannah Rosner ¶ 4.

31. On December 3, 2025, almost two weeks later, EOIR generated a Notice of Hearing scheduling a master calendar hearing for December 9, 2025, at the Elizabeth

Immigration Court. Ex. B, Decl. of Hannah Rosner ¶ 6. On December 8, 2025, DHS uploaded an I-213 with an A-number pertaining to a different respondent, which was rejected by EOIR. *Id.* On December 9, 2025, Petitioner moved to terminate proceedings because the NTA was defective. *Id.* at ¶ 7; *see also Niz-Chavez v. Garland*, 593 U.S. 155, 161 (2021) (an NTA is a singular document containing all information required by statute, rather than a "mishmash of pieces with some assembly required"); *Matter of Fernandes*, 28 I. & N. Dec. 605, 612 (B.I.A. 2022) (A subsequent Notice of Hearing does not cure a defective NTA); *Matter of R-T-P-*, 28 I. & N. Dec. 828, 831-32 (B.I.A. 2024) (recently reaffirming the "single document" requirement). Petitioner also moved to terminate because DHS had not filed any evidence of alienage. Ex. B, Decl. of Hannah Rosner ¶ 8. The IJ denied the motion to terminate based on the defective NTA and adjourned for DHS to file evidence of alienage. *Id.* at ¶¶ 7-8.

32. On December 10, 2025, almost two months after Petitioner was first detained, DHS filed an I-213 alleging that not only immigration agents but also FBI and DEA agents were trying to locate someone named Cesar Tuy-Patzan. EOIR public information shows Tuy-Patzan was ordered removed in Baltimore in 2019, and no new proceedings have been lodged against him. *Id.* at ¶ 9; Ex. F, Form I-213, Tab A. The I-213 alleges that this man was connected to Petitioner's address in Brooklyn and that Petitioner matched his description. However, the I-213 does not provide any additional information regarding what that description was or why agents believed that he lived in Brooklyn, how many agents were involved in the arrest or their names, or why the FBI and DEA were involved.

33. The I-213 also does not specify whether the agents who questioned Petitioner pertained to ICE or another law enforcement agency allegedly present besides Deportation Officer Lukasz Kubicz. The I-213 alleges that DO Kubicz provided Petitioner with an arrest

warrant, though Petitioner alleges he was not given any paperwork until he arrived at 26 Federal Plaza. Ex. A, Pet.'s Decl. ¶¶ 16, 19. The I-213 itself is signed by a different deportation officer, Kennedy, who is not alleged to have been present for the arrest.

34. Petitioner has suffered from significant anxiety in detention. *Id.* ¶ 20. He is not getting enough sleep, and he is woken up every few hours. *Id.* Before detention, Petitioner went to the doctor due to severe pain near his right hip, but he has not received proper treatment in detention. *Id.* ¶ 21. Petitioner also used to take antidepressants and anxiety medications before his detention, but he has not received these medications despite requesting them in detention, even though he is having anxiety attacks. *Id.*

35. Petitioner is not a danger to the community. He has no criminal history. He has never been charged with or convicted of a crime. He had never even received a parking ticket before October 16, 2025, when he was detained by ICE. *Id.* ¶ 22.

36. Petitioner is also not a flight risk. He has never fled or attempted to flee from law enforcement. He has lived in New York for years and has built a life there.

37. Absent relief from this court, Petitioner will remain in detention. He faces the prospect of months, or even years, in immigration custody, isolated from his family and community.

LEGAL FRAMEWORK

Immigration Detention Framework and Bond Hearing Eligibility

38. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Section 1226(a) and the implementing

regulations require an individualized determination as to the noncitizen's risk of flight and danger to the community. *See* 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8); *Chi Thon Ngo v. I.N.S.*, 192 F. 3d 390, 398 (3d Cir. 1999). Noncitizens discretionarily detained pursuant to § 1226(a) are also generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Whereas noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

40. 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).

41. Third, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

42. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

43. 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, 3009–582-583, 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).

44. Following the enactment of the IIRIRA, 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. 10312, 10323 (Mar. 6, 1997).

45. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible for bond pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ 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)).

ICE Campaign to Detain Law-Abiding Noncitizens and Its Unlawful Expansion of Mandatory Detention Under § 1225(b)(2)(A)

46. Petitioner's arrest is part of a larger, aggressive effort by DHS to arrest and detain people without reasonable suspicion that they are noncitizens who lack legal immigration status, and without individualized consideration of the necessity of immigration detention. *See generally* Ex. B, Decl. of Alexandra Lampert and Decl. of Sharon Schwartz Kaufman.

47. In January 2025, ICE instituted a daily quota for 1,200 to 1,500 arrests of noncitizens to carry out the government's "mass deportation" plan. *See* Nick Miroff & Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up arrests*, WASHINGTON POST (Jan. 26, 2025) https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/. ICE field offices that did not reach their target would be "held accountable." *Id.* Senior ICE officials, including White House "Border Czar" Tom Homan acknowledged that these quotas would lead to "more arrests nationwide" of individuals who do not pose public safety or national security threats. *Id.* By May 2025, that quota had doubled to a minimum of 3,000 arrests per day. *See* Hamed Aleaziz, *Under Pressure from the White House, ICE Seeks New Ways to Ramp Up Arrests*, NY TIMES (June 13 2025), https://www.nytimes.com/2025/06/11/us/politics/ice-la-protest-arrests.html. Former ICE chief of

staff during the Biden administration opined: "This isn't about public safety or national security; this is about hitting a quota number. That's it." *Id.*

48. Officers have been arresting large swaths of noncitizens without regard for the individual circumstances. *See* Julia Ainsley, Did Martinez, and Laura Strickler, *Under Trump administration, ICE scraps paperwork officers once had to do before immigration arrests*, NBC News (Sept. 9, 2025) https://www.nbcnews.com/politics/national-security/trump-administration-ice-scraps-paperwork-officers-immigration-arrests-rcna229407 ("For more than 15 years, before they conducted any operation to arrest an immigrant in the United States, officers with [ICE's] Enforcement and Removal Operations division have been required to fill out a form with details about their target – name, appearance, known addresses and employment, immigration history, any criminal history and more – and give it to a supervisor for approval. This year, in a sign of how the agency has moved from targeted enforcement to broad street sweeps under the Trump administration, that policy has been ended, six current and former officials and agents of ICE and [DHS] told NBC News.").

49. As part of this concerted effort, on July 8, 2025, ICE, in coordination with the Department of Justice (DOJ), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

50. 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 shall now be subject to mandatory detention under § 1225(b)(2)(A). The policy

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

51. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.* at 229.

52. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities, including several courts in this district. *Zumba*, 2025 WL 2753496; *Bethancourt Soto*, 2025 WL 2976572, at *9; *Lucero*, 2025 WL 3240895, at *2; *Valerio*, 2025 WL 3251445, at *3 (collecting cases).

53. Courts have likewise rejected *Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See, e.g.*, *Demirel*, 2025 WL 3218243, at *1 (appending "288 district court decisions addressing this issue," 282 of which "have determined that § 1226(a) applies or likely applies").

54. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington 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. 2025).

55. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See generally*, *Rodriguez-*

Acurio v. Almodovar, No. 2:25-CV-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *O.F.B. v. Maldonado*, No. 25-CV-6336 (HG), 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025); *Guzman Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271 (D. Mass. 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, 798 F. Supp. 3d 955, 959-60 (D. Neb. 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes

detention); *Jacinto v. Trump*, 796 F. Supp. 3d 584, 589-90 (D. Neb. 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

56. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. 779 F. Supp. 3d at 1257-59.

57. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under § 1229(a), to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229(a)(1).

58. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to people charged as being inadmissible makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

59. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

60. 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). 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).

61. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who is alleged to have already entered and been residing in the United States at the time they were apprehended. *Patel v. Almodovar*, No. 25-15345 (SDW), 2025 WL 3012323, at *3 (D.N.J. Oct. 28, 2025) (holding "a noncitizen like Petitioner, who has already entered and is present in the country, simply cannot be characterized as 'seeking entry' consistent with the ordinary meaning of that phrase") (citing *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *13).

Due Process Constraints on Immigration Detention

62. Due process requires, at a minimum, "that a deprivation of liberty be 'accompanied by minimum procedural safeguards, including some form of notice and a hearing.'" *Hickox v. Christie*, 205 F. Supp. 3d 579, 601 (D.N.J. 2016), citing *Mitchell v. W. Grant Co.*, 416 U.S. 600, 624 (1974); *see also Zumba,* 2025 WL 2753496, at *10 (ordering release of petitioner improperly detained under § 1225 and holding that improper detention under § 1225 without a bond hearing "serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief"); *Bethancourt-Soto*, 2025 WL 2976572, at *8 (holding that, for a petitioner with no criminal record who was illegally detained under § 1225 without a bond hearing, the facts "weigh decisively in [p]etitioner's favor"); *Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) (ordering release of noncitizen re-

detained after an immigration court hearing based on finding that "the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained").

63. Where ICE detains individuals without conducting any individualized assessment as to their immigration status, let alone their danger or flight risk, those individuals merit immediate release from custody. *See Bethancourt Soto*, 2025 WL 2976572, at *9 (ordering immediate release of individual unlawfully detained by ICE under § 1225(b) and there was no basis for detaining him under § 1226(a)); *see also Zumba,* 2025 WL 2753496, at *11 (reaching same result for noncitizen who arrived in the U.S. over 20 years ago, was ordered removed in 2017, but whose case was remanded from the BIA to the immigration judge for further proceedings based on new evidence); *Quispe v. Rose*, No. 3:25-CV-02276, 2025 WL 3537279, at *2, *8 (M.D. Pa. Dec. 10, 2025) (arriving at same conclusion for noncitizen who was arrested upon appearing at ICE facility for a check-in appointment); *Patel v. O'Neil*, 3:25-cv-2185, 2025 WL 3516865, at *6-7 (M.D. Pa. Dec. 8, 2025) (same, for noncitizen asylum applicant).

64. Immediate release is also appropriate where, as is the case here, there are serious health issues not being addressed. *See M.M., v. Rokosky*, No. 25-18547 (MCA), 2025 WL 3687941 (D.N.J. Dec. 19, 2025) (finding that immediate release is the correct habeas relief when a detention facility has failed to provide adequate medical care); *see also Coronel v. Decker*, 449 F. Supp. 3d 274, 288-90 (S.D.N.Y. 2020) (ordering immediate release when remaining detained would increase the risk that petitioner contracts COVID-19 and exacerbates petitioner's underlying medical conditions). Petitioner has not been provided his mental health medication for the entire period of his detainment – over two months – despite his anxiety attacks, and despite pain in his right hip described as "severe," did not receive any imaging for approximately

two months, nor has he been seen by a doctor to discuss his results. *See* Ex. B, Decl. of Hannah Rosner, ¶ 11; *see generally* Ex. G, Excerpt of Petitioner's Delaney Hall Medical Records.

***Maldanado Bautista* and the Bond Denial Class**

65. In the alternative, Petitioner is also entitled to a bond hearing as a member of the of the Bond Denial Class certified in *Maldanado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

66. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs. *See Bautista I* 2025 WL 3289861, at *11 (order granting partial summary judgment to named Plaintiffs-Petitioners). On November 25, 2025, the court certified a nationwide class and extended declaratory judgment to the certified class, and on December 18, 2025, issued a final judgment with respect to the same. *Bautista II*, 2025 WL 3288403, at *9 (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment); *Bautista III*, 2025 WL 3678485 (entering final judgment in favor of the petitioners and "members of the Bond Eligible Class").

67. The Bond Eligible Class consists of all noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Bautista II,* 2025 WL 3288403, at *9.

68. Petitioner (1) is alleged to have entered the United States without inspection; (2) is alleged to have not been apprehended upon arrival; and (3) was not subject to detention under

8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

69. Accordingly, Petitioner is a member of the Bond Eligible Class and is entitled to the declaratory relief provided by the district court in *Maldonado Bautista*: namely, a bond hearing. *Bautista II,* 2025 WL 3288403, at *9; *Bautista III*, 2025 WL 3678485.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA, 8 U.S.C. § 1226(a)

70. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

71. 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 are alleged to have previously entered the country and to have been residing in the United States for years 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.

72. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution – Procedural Due Process

73. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

74. 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 (2001).

75. Petitioner has a fundamental interest in liberty and being free from official restraint.

76. The government's detention of Petitioner without a bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

77. More importantly, Respondents' misclassification of the statute under which Petitioner is detained fundamentally violated his due process rights. At no time did DHS conduct an individualized assessment of the need for Petitioner's detention. Instead, he was subject to an unlawful arrest and detention by ICE.

78. ICE's failure to conduct an individualized review prior to detention violates due process and necessitates his immediate release.

COUNT III

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution – Substantive Due Process

79. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

80. The Fifth Amendment of the Constitution further guarantees that people in civil detention may not be subject to conditions of confinement that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates the substantive due process rights of a person in civil immigration detention if it "so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human

needs—e.g.… medical care" *Cristian A.R. v. Decker*, 453 F. Supp. 3d 670, 683 n.20 (D.N.J. 2020) (citing *Helling v. McKinney*, 509 U.S. 24, 32 (1993)).

81. Petitioner is not a flight risk nor is he a danger to the community. Respondents' detention of Petition is therefore unlawful and unjustified. Accordingly, Petitioner's detention is punitive and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

82. Moreover, Respondents have not provided Petitioner with access to the antidepressant and anxiety medication he was taking prior to being detained, causing him to have anxiety attacks during his detention, and have not adequately treated the severe pain in his right hip.

83. Petitioner's continued detention violates his right to substantive due process because of: (1) the lack of individualized review to determine whether he is a flight risk or presents a danger to the community; (2) his ongoing medical issues with risk of adverse health effects; and (3) disruptions to care for his right hip, his anxiety and his depression.

COUNT IV

Violation of the Fourth Amendment to the U.S. Constitution – Unlawful Arrest

84. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

85. ICE agents seized Petitioner in violation of his Fourth Amendment rights.

86. An immigration officer is authorized to "briefly detain [a] person for questioning" if they have "a reasonable suspicion, based on specific articulable facts, that *the person being questioned* is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States." 8 C.F.R. § 287.8 (b)(2) (emphasis added); *see United States*

v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) ("For the same reasons that the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens."). However, a stop may not be "prolonged beyond 'the time needed to handle the matter for which the stop was made.'" *Millan-Hernandez v. Barr,* 965 F.3d 140, 147 (2d Cir. 2020) (quoting *Rodriguez v. United States*, 575 U.S. 348, 350 (2015)).

87. Here, ICE ostensibly stopped Petitioner to identify and apprehend their alleged target, not Petitioner. Respondents have provided no evidence that there was reasonable suspicion to stop him, other than an assertion in the Form I-230 submitted almost *two months after* his arrest that he matched the alleged target's description, Ex. F, Form I-213, Tab A, and appear to have relied on other "improper consideration[s]", such as apparent race or ethnicity to conduct their stop. Ex. A, Pet.'s Decl. ¶ 22; *see also, e.g., Zuniga-Perez v. Sessions*, 897 F.3d 114, 120, 124 (2d Cir. 2018) (finding a search was improperly based on race where immigration authorities asked about petitioner's status after "the troopers had determined that the suspected fugitive was not present").

88. However, even assuming, *arguendo*, that they did, ICE held Petitioner well after they realized that he was not their target and had no information about their target. At that point, ICE could not have had reasonable suspicion about "the person being questioned" and had no authority to continue to hold Petitioner for questioning. 8 C.F.R. § 287.8(b)(2). ICE therefore had no authority under the statute or the Constitution to continue to hold or question him, rendering their actions both *ultra vires* and unconstitutional.

COUNT V

Request for Relief Pursuant to *Maldonado Bautista*

89. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

90. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

91. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members. *Bautista I,* 2025 WL 3289861, at *11.

92. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."" *Bautista II,* 2025 WL 3288403, at *9.

93. Respondents are parties to *Maldonado Bautista* and bound by the Court's final judgment.

94. By asserting that Petitioner is subject to mandatory detention under § 1225(b)(2) such that he is not entitled to a bond hearing, Respondents violate Petitioner's statutory rights under the INA and the court's judgment in *Maldonado Bautista*.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the District of New Jersey while this habeas petition is pending;

c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately, returning to the status prior to detention without any additional restrictions on his liberty; or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

d. Declare that Petitioner's detention is unlawful;

e. Enjoin Respondents from re-detaining or denying bond to Petitioner in any subsequent proceeding on the basis that he must be detained pursuant to (1) 8 U.S.C. § 1225(b), or (2) 8 U.S.C. § 1226(c) absent a change in relevant circumstances consistent with the Court's Order;

f. If, in the alternative, a bond hearing is afforded, enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(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 this 29th of December, 2025.

/s/ Allison Wilkinson

Allison Wilkinson
Bar Number: 13060214
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Tel: 212-450-4168
Email: allison.wilkinson@davispolk.com

Attorney for Petitioner