UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDUAR SANTIAGO VILLANUEVA-MILLA,
Petitioner,

v.

PAUL ARTETA
in his official capacity as Sheriff of Orange County, New York and Warden of the Orange County Correctional Facility;

KENNETH GENALO,
in his official capacity as Field Office Director of New York, Immigration and Customs Enforcement;

TODD M. LYONS,
in his official capacity as Acting Director, United States Immigration and Customs Enforcement;

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

PAM BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.
Respondents.

Civil Action No. 26-349 (GHW)

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

INTRODUCTION

1. Petitioner Eduar Santiago Villanueva-Milla ("Petitioner" or "Mr. Villanueva-Milla") petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. Respondents are detaining Mr. Villanueva-Milla without the opportunity to seek bond under 8 U.S.C. § 1225(b)(2)(A). As several courts in this District and hundreds of courts across the country have held, § 1225(b)(2)(A) cannot apply to noncitizens like Petitioner who are present in the United States without having been admitted and who are arrested within the United States.

2. Mr. Villanueva entered the United States as an unaccompanied minor in 2018 and, after being released into the care of his uncle, he has resided in New York with his family and was at liberty while his removal proceedings continued. He filed an application for asylum, and in 2023, the Department of Homeland Security joined his motion to dismiss his removal proceedings. Then, on January 12, 2026, Respondents arrested and re-detained Mr. Villanueva-Milla.

3. Petitioner has no other remedy at law than to petition this Court and request the Court order Respondents either to immediately release him from immigration custody, or to order an individualized bond hearing at which the government must bear the burden of proving by clear and convincing evidence that continued detention remains justified. In such a bond hearing, to satisfy due process, an adjudicator must also consider the ability to pay bond and the availability of alternatives to detention, including conditions of supervision, that would mitigate any concerns as to flight risk and danger.

JURISDICTION

4. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28

U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that he is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

5. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

6. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over [the petitioner.]'" (citing 28 U.S.C. § 2242)).

7. The place of employment of Respondent Kenneth Genalo is also located within the District, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

EXHAUSTION

8. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Beharry v. Ashcroft*, 329

F.3d 51, 56 (2d Cir.2003); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). No exhaustion requirement applies to the claims raised in this petition because the immigration court and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

9. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538–39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456–57 (S.D.N.Y. 2010). The Board of Immigration Appeals ("BIA") has held in a precedential decision that noncitizens like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As immigration judges are bound by *Yajure Hurtado*, any request for a bond hearing before an immigration judge would be futile.

10. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

PARTIES

11. Petitioner is a 25-year-old man from Honduras who came to the United States as an unaccompanied minor in 2018 and who has lived here since then. He has been detained by Respondents at Orange County Correctional Facility in Goshen, NY since January 12, 2026. Petitioner's removal proceedings are venued at the Varick Immigration Court in New York, NY.

12. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York and acts as the warden for Orange County Correctional Facility, where

Petitioner is detained. As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Rd, Goshen, NY 10924.

13. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is a legal custodian of Petitioner and is named in his official capacity. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises Respondent Francis, and he is legally responsible for Petitioner's detention and removal. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, DC 20536.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Southern District of New York; she supervises Respondent Genalo; and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, 2801 Nebraska Avenue, N.W., Washington, DC 20528.

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

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Mr. Villanueva-Milla Enters the United States as an Unaccompanied Minor in 2018 and Files for Asylum

17. Mr. Villanueva-Milla was born in 2000 in Honduras. In January 2018, he entered the United States as an unaccompanied minor when he was 17 years old. On or about January 13, 2018, a border patrol agent encountered him in the Rio Grande Valley, and he was brought to the Rio Grande Processing Center. Mr. Villanueva-Milla was served with a warrant for his arrest and a Notice to Appear ("NTA"), placing him in removal proceedings.

18. Customs and Border Patrol ("CBP") identified Mr. Villanueva as an unaccompanied minor, *i.e.,* an unaccompanied alien child ("UAC").[1] Mr. Villanueva-Milla was then detained at His House Children's Home in Miami, Florida, a detention center for unaccompanied minors run by the Department of Health and Human Services' Office of Refugee

[1] An unaccompanied alien child ("UAC"), or unaccompanied minor, is a child who: "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

Resettlement ("ORR"). In March 2018, Mr. Villanueva-Milla was released from ORR custody into his uncle's care in Monroe, New York.

19. Upon information and belief, Mr. Villanueva-Milla filed a Form I-589 application for asylum and withholding of removal with the immigration court on or about October 24, 2018. Pursuant to guidance at the time, U.S. Citizenship and Immigration Services ("USCIS") would have deferred to CBP's prior determination that Mr. Villanueva-Milla was an unaccompanied minor when he entered the United States and taken initial jurisdiction of the asylum application under 8 U.S.C. § 1158(b)(3)(C). *See J.O.P. v. U.S. Dep't of Homeland Sec.*, 338 F.R.D. 33, 44 (D. Md. 2020) (describing the 2013 memorandum that governed such processes in 2018).[2] Section 1158 provides that USCIS "shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child." 8 U.S.C. § 1158(b)(3)(C); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d)(7)(B), 122 Stat. 5504, 5081 ("TVPRA").

20. Mr. Villanueva-Milla attended a biometrics appointment with USCIS related to his asylum application on February 24, 2020.[3]

21. Mr. Villanueva-Milla attended every hearing in his removal proceedings.

22. On November 13, 2020, Mr. Villanueva pled guilty to the violation of driving while ability impaired by the consumption of alcohol, N.Y. Veh. & Traf. L. § 1192(1)—a non-criminal offense in New York—and received a sentence of a conditional discharge. He also pled guilty to

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[2] *See also* USCIS Memorandum, Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (May 28, 2013), *available at* ttps://www.uscis.gov/sites/default/files/document/memos/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf.

[3] The Government asserts, upon information and belief, that Mr. Villanueva-Milla filed an asylum application on February 24, 2020. *See* ECF No. 18 at 2.

a violation of stopping, standing, or parking upon a highway outside of a business or residence district, *id.* § 1201(a)—also a non-criminal offense—and was ordered to pay a fine.

23. On August 16, 2023, upon a joint motion by Mr. Villanueva-Milla and DHS, Mr. Villanueva-Milla's removal proceedings were dismissed without prejudice.

24. Upon information and belief, Mr. Villanueva-Milla's asylum application is still pending before USCIS.[4]

25. Mr. Villanueva-Milla has continuously resided in New York since being released from ORR custody into his uncle's care in 2018. He currently lives with his family, including his mother and three siblings, and he has two young U.S. citizen children. Mr. Villanueva-Milla financially supports his children and family.

26. On January 12, 2026, ICE officers arrested and detained Mr. Villanueva-Milla. At the time of his arrest, Mr. Villanueva-Milla did not have any active removal proceedings against him. DHS served him with a new NTA and a Form I-200, administrative warrant for his arrest.

27. ICE subsequently brought Mr. Villanueva-Milla to Orange County Jail, where he remains detained.

28. Brooklyn Defender Services has represented Mr. Villanueva-Milla *pro bono* in his removal proceedings and in the instant habeas Petition since January 23, 2026. On January 29, 2026, Mr. Villanueva-Milla appeared with counsel at a master calendar hearing before the

[4] Petitioner's immigration and habeas counsel were retained on January 23, 2026. Counsel is in the process of submitting a FOIA request to the relevant agencies, including USCIS. On January 23, 2026, Petitioner's immigration attorney sent via FedEx mail the requisite releases to Orange County Jail to obtain Mr. Villanueva-Milla's signature for *inter alia* the FOIA request. Petitioner's counsel is currently waiting for the executed releases from Mr. Villanueva-Milla to be ready for courier pick up at the jail.

immigration court. The matter has been continued for another master calendar hearing on February 12, 2026.

29. Since Mr. Villanueva-Milla has been detained, his family members have had to financially support his children in his absence.

II. Mr. Villanueva-Milla is a Class Member under the *J.O.P.* Settlement and Cannot Be Removed Before USCIS Adjudicates His Asylum Application

30. Upon information and belief, Mr. Villanueva-Milla is a class member protected by the *J.O.P.* settlement. *J.O.P. v. U.S. Dep't of Homeland Sec.*, No. 8:19-cv-1944 (SAG), ECF No. 199-2 (D. Md.) ("*J.O.P.* Settlement"). The *J.O.P.* Settlement is attached hereto as Exhibit A.

31. The *J.O.P.* litigation concerns "provisions [in the TVPRA] establishing protections for at-risk immigrant children." *J.O.P.*, 338 F.R.D. at 42. The TVRPA requires UACs to be treated differently than other noncitizens entering the United States without lawful status. For example, "the statute provides that any federal agency that apprehends or discovers a UAC must notify HHS within 48 hours and must transfer custody of the child to HHS within 72 hours." *Id.* (citing TVPRA § 235(b), *codified at* 8 U.S.C. § 1232(b)(2), (3)). Additionally, and particularly relevant here, "the TVPRA also provides that USCIS asylum officers shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.'"[5] *Id.* (quoting TVRPA § 235(d)(7)(B), *codified at* 8 U.S.C. § 1158(b)(3)(C)). "Therefore, whether an applicant is considered a UAC can have a significant impact on his or her progression through the asylum process—this status

[5] "The statute also exempts UACs from the requirement that a potential asylee file an application within a year of arriving in the United States." *J.O.P.*, 338 F.R.D. at 43 (citing 8 U.S.C. § 1158(a)(2)(B), (E)).

determines whether the asylum application is adjudicated by USCIS after a non-adversarial interview or by an [immigration judge] in adversarial removal proceedings." *Id.* at 43.

32. In *J.O.P.*, a class of noncitizens who "entered this country as unaccompanied minors and later sought asylum sued the government . . . to enforce its members' rights to have their asylum applications adjudicated on the merits by USCIS while they remained physically present in the United States." 779 F. Supp. 3d 570, 575 (D. Md. 2025). The parties reached a settlement agreement in 2024. *Id.* at 576. The settlement:

> defines the certified Class as "all individuals nationwide who prior to [February 24, 2025]: (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits."

Id. (footnote omitted) (quoting *J.O.P.* Settlement at 5, Sec. II.E). Mr. Villanueva-Milla is a class member because he entered the United States as an unaccompanied minor in January 2018; he filed an asylum application in or around October 2018 when he was over 18 years old and over which USCIS took initial jurisdiction; and, upon information and belief, his application has not yet been adjudicated on the merits by USCIS. The government has also asserted that Mr. Villanueva-Milla is a *J.O.P.* settlement class member. *See* ECF No. 18 at 2.

33. The settlement agreement "provides that 'USCIS will exercise Initial Jurisdiction over Class Members' asylum applications in accordance with the terms of this Settlement Agreement and adjudicate them on the merits.'" *Id.* (quoting *J.O.P.* Settlement at 9, Sec. III.B). The settlement agreement also provides that: "[w]ith respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until

USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement." *Id.* (quoting *J.O.P.* Settlement at 8, Sec. III.I).

34. For class members in removal proceedings, the settlement agreement also requires DHS to:

> join or non-oppose Class Members' motion(s) for a continuance, administrative closure unless unavailable under controlling law in a particular jurisdiction, and, where available, assignment of cases to the EOIR status docket, that have been filed or made orally on the record in immigration proceedings in order to await USCIS exercise of Initial Jurisdiction over their asylum application. . . . DHS will generally join or non-oppose Class Members' motion(s) to dismiss or terminate filed or otherwise made in order to await USCIS exercise of Initial Jurisdiction over their asylum application.

J.O.P. Settlement Sec. III.H.

35. Therefore, under the settlement agreement, Mr. Villanueva-Milla cannot be removed while his asylum application before USCIS remains pending.

III. Habeas Corpus Petition Procedural History

36. On January 14, 2026, Mr. Villanueva-Milla, through his next friend Edda Rosydel Milla, his mother, filed the instant habeas action *pro se*. That same day, the Court set a briefing schedule and enjoined the government from transferring Mr. Villanueva-Milla to a facility outside of this District, the Eastern District of New York, or the District of New Jersey. ECF No. 10 at 2–3.

37. On January 23, 2026, Mr. Villanueva-Milla retained the undersigned counsel to represent him in this action. On January 28, 2026, Mr. Villanueva-Milla informed the Court that he intended to file an amended petition for writ of habeas corpus, *see* ECF No. 22, and the Court endorsed the parties proposed briefing schedule on January 29, 2026, ECF No. 23.

LEGAL ARGUMENT

I. Petitioner's Detention under § 1225(b)(2)(A) Violates the INA

A. Immigration Detention Framework

38. The Immigration and Nationality Act ("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 immigration judge. 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); *id.* § 236.1(c)(8); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020). 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); *id.* § 1236.1(d). Whereas noncitizens who have been arrested, charged with, or convicted of certain crimes or fall under certain terrorism-related grounds of removability 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. *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 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).

44. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection and who were not admitted were not considered detained under § 1225 and 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) ("1997 Regulation").

45. 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 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)).

B. ICE's Unlawful Expansion of Mandatory Detention Under § 1225(b)(2)(A)

46. 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.

47. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[6] claims that all persons who present in the United States without

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

having been admitted shall now be subject to mandatory detention provision under § 1225(b)(2)(A).[7] The policy applies regardless of when or where a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

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

C. Petitioner's Detention Under § 1225(b)(2)(A) Violates The INA

49. Since the Government adopted its new policy and the BIA issued *Matter of Yajure Hurtado*, hundreds of federal courts, including several in this District, have rejected the Government's new interpretation of the INA's detention authorities and *Matter of Yajure Hurtado*. *See, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (Ho, J.); *J.G.O. v. Francis*, No. 25-cv-7233 (AS), 2025 WL 3040142, at *5 (S.D.N.Y. Oct. 28, 2025); *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025); *Romero v. Francis*, No. 25-cv-8112 (JGK), 2025 WL 3110459, at *2–3 (S.D.N.Y. Nov. 6, 2025); *Cardenas v. Almodovar*, No. 25-cv-9169 (JMF), 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *6 (S.D.N.Y. Nov. 25, 2025); *Campbell v. Almodovar*, No. 25-cv-9509 (JLR), 2025 WL 3538351, at *6 (S.D.N.Y. Dec. 10, 2025); *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at *3 (S.D.N.Y. Dec. 17,

[7] On December 18, 2025, the U.S. District Court for the Central District of California in *Maldonado Bautista v. Santacruz* vacated the July 8, 2025, ICE memo as not in accordance with law under the Administrative Procedure Act. *See Maldonado Bautista v. Santacruz*, No. 25-cv-1873 (SSS), 2025 WL 3713987, at *22 (C.D. Cal. Dec. 18, 2025); *Maldonado Bautista v. Santacruz*, No. 25-cv-1873 (SSS), 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025) (entering final judgment under Federal Rule of Civil Procedure 54(b)).

2025); *Huang v. Almodovar*, No. 26-cv-551 (DLC), 2026 WL 205656, at *2 (S.D.N.Y. Jan. 27, 2026) [8] This Court should do the same.

50. The plain text of § 1225(b)(2)(A) confirms that it cannot apply to Petitioner. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a" removal proceeding under § 1229a. 8 U.S.C. § 1225(b)(2)(A). "[T]he language of [§ 1225(b)(2)(A)] makes clear that it applies only if three criteria are met. The noncitizen must be (i) an 'applicant for admission,' (ii) 'seeking admission,' and (iii) 'not clearly and beyond a doubt entitled to be admitted.'" *Barco Mercado,* 2025 WL 3295903, at *4; *Yao*, 2025 WL 3653433, at *5; *Lopez Benitez*, 795 F. Supp. 3d at 478–88.

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[8] Three judges in this District have agreed with the Government's interpretation of § 1225(b). *See Chen v. Almodovar*, No. 25-cv-8350 (MKV), 2025 WL 3484855, at *1 (S.D.N.Y. Dec. 4, 2025); *Chen v. Almodovar*, No. 25-cv-9670 (JPC), 2026 WL 100761, at *1 (S.D.N.Y. Jan. 14, 2026); *Weng v. Genalo*, No. 25-cv-9595, 2026 WL 194248 (JHR), at *1 (S.D.N.Y. Jan. 25, 2026). Other judges in this District have since responded to and declined to follow these decisions. *See Goorakani v. Lyons*, No. 25-cv-9456 (DEH), 2025 WL 3632896, at *8-12 (S.D.N.Y. Dec. 15, 2025); *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at *8-10 (S.D.N.Y. Dec. 17, 2025); *Yang v. Almodovar*, No. 25-cv-10265 (JPO), 2025 WL 3678644, at *1 (S.D.N.Y. Dec. 18, 2025); *Castro Coneo v. Almodovar*, No. 25-cv-9850 (NSR), 2025 WL 3754079, at *3 n.1 (S.D.N.Y. Dec. 29, 2025); *Sidqui v. Almodovar*, No. 25-cv-9349 (VSB), 2026 WL 251929, at *9 (S.D.N.Y. Jan. 30, 2026).

Additionally, in *Maldonado Bautista v. Santacruz*, the court certified a class of bond-eligible noncitizens erroneously detained under § 1225(b) and declared that the class is detained under § 1226(a), and therefore entitled to a bond hearing. *See Maldonado Bautista*, 2025 WL 3678485, at *1. The class is defined as "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." *Maldonado Bautista*, 2025 WL 3713987, at *32.

51. While Mr. Villanueva-Milla is an "applicant for admission,"[9] he is not "seeking admission" under § 1225(b)(2)(A). "[T]he phrase 'seeking admission' 'necessarily implies some sort of present-tense action.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)); *J.G.O.*, 2025 WL 3040142, at *3; *Campbell*, 2025 WL 3538351, at *6; *Lopez Benitez*, 795 F. Supp. 3d at 489; *cf. United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). The INA "defines 'admission' as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.'" *J.G.O.*, 2025 WL 3040142, at *3 (quoting 8 U.S.C. § 1101(a)(13)(A)). "The requirement that an 'applicant for admission' be 'seeking admission' therefore limits the scope of [§ 1225(b)] to those noncitizens actively seeking 'lawful entry . . . into the United States after inspection and authorization by an immigration officer.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting 8 U.S.C. § 1101(a)(13)(A)). Put differently, "'seeking admission' requires an alien to continue to want to go into the country." *J.G.O.*, 2025 WL 3040142, at *3.

52. The plain text of the statute is buttressed by its "implementing regulations—which were 'promulgated mere months after passage of the statute' and have remained consistent over time." *Lopez Benitez*, 795 F. Supp. 3d at 489 (quoting *Martinez*, 792 F. Supp. 3d at 219). "DHS's own regulations understand an 'applicant seeking admission' to be synonymous with an 'arriving alien.'" *Tumba*, 2025 WL 3079014, at *4. "And an 'arriving alien' is 'an applicant for admission

[9] An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

coming or attempting to come into the United States at a port-of-entry.'" *Id.* (quoting 8 C.F.R. § 1001.1).

53. Accordingly, § 1225(b) does not apply to Petitioner because "when DHS agents detained [him] in [2026], he was no longer seeking to enter the country. He was already in — and had been for several years." *Campbell*, 2025 WL 3538351, at *6; *see also J.G.O.*, 2025 WL 3040142, at *3 (Petitioner is not "seeking admission" because "he's already here.").

54. By holding that § 1225(b)(2)(A) applies to all applicants for admission, *Matter of Yajure Hurtado* reads the "seeking admission" requirement out of the statute. *See Campbell*, 2025 WL 3538351, at *7. If, as the BIA has now concluded and the Government urges, "§ 1225(b)(2)(A) were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 795 F. Supp. 3d at 488. Tellingly, the BIA in *Yajure Hurtado* did not provide any definition of "seeking admission" that would resolve this redundancy. *See* 29 I&N Dec. at 221. This interpretation of § 1225(b)(2)(A) "clearly 'violates the rule against surplusage.'" *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 218).

55. Looking beyond § 1225(b) to the larger statutory structure, *Matter of Yajure Hurtado*'s holding creates even more surplusage problems when compared with other detention provisions. First, if § 1225(b) "mandated detention for all noncitizens who enter the country illegally, 'then it is not clear under what circumstances [§ 1226(a)'s] authorization of detention on a discretionary basis would ever apply.'" *Barco Mercado*, 2025 WL 3295903, at *6 (quoting *Lopez Benitez*, 795 F. Supp. 3d at 490); *see also Tumba*, 2025 WL 3079014, at *4 ("Respondents' reading of Section 1225 would also all but read Section 1226 off the books").

56. Second, "Respondents' reading of § 1225 would likewise render superfluous the mandatory detention provisions found in" § 1226(c). *Campbell*, 2025 WL 3538351, at *7. "Section 1226(c)(1)(A) mandates detention for 'any [noncitizen] who is inadmissible by reason of having committed an offense covered in section 1182(a)(2) of this title,' such as offenses related to controlled substances. '[T]his mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions.'" *Id.* (citations omitted) (quoting 8 U.S.C. § 1226(c)(1)(A); and *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *8 (E.D.N.Y. Sept. 29, 2025)).

57. *Matter of Yajure Hurtado* also "render[s] Congress' recent amendment to § 1226(c) redundant." *Barco Mercado*, 2025 WL 3295903, at *7; *Lopez Benitez*, 795 F. Supp. 3d at 489-90; *Tumba*, 2025 WL 3079014, at *4. "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' [courts] generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)). Passed in January 2025, the Laken Riley Act "makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions of 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes." *Tumba*, 2025 WL 3079014, at *4 (quoting *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025)); *see also* Laken Riley Act, 139 Stat. at 3, *codified at* 8 U.S.C. § 1226(c)(1)(E). "By [the Government's] understanding, all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6) (which states that those like Petitioner who are present without admission are inadmissible) are already subject to mandatory detention." *Tumba*, 2025 WL 3079014, at *4. Simply put, if *Matter of Yajure Hurtado*

were correct, "the Laken Riley Act would have been largely unnecessary." *Barco Mercado*, 2025 WL 3295903, at *7; *Campbell*, 2025 WL 3538351, at *7: *Yao*, 2025 WL 3653433, at *7.

58. In addition to traditional statutory interpretation tools, agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Helpfully, "[s]hortly after Congress enacted IIRIRA, [DOJ] issued an interim rule explaining IIRIRA and how it amended the INA." *Barco Mercado*, 2025 WL 3295903, at *8. "There, the DOJ stated that '[d]espite being applicants for admission, noncitizens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.'" *Id.* (quoting 1997 Regulation). And the Government maintained this position for almost thirty years—until the July 2025 ICE Memo and *Matter of Yajure Hurtado*. Thus, "decades of practice" cuts against the BIA's novel position and supports Petitioner's interpretation and numerous district courts' rulings. *Lopez Benitez*, 795 F. Supp. 3d at 490.

59. Finally, *Matter of Yajure Hurtado* is inconsistent with precedent. *In Jennings v. Rodriguez*, the Supreme Court explained that § 1225 "applies to 'aliens seeking admission into the country,' whereas [§ 1226] applies to 'aliens already in the country pending the outcome of removal proceedings.'" *Barco Mercado*, 2025 WL 3295903, at *9 (quoting *Jennings v. Rodriguez*, 583 U.S. 28, 289 (2018)). "It went on in that same case to repeat that [§ 1226] 'applies to aliens already present in the United States,' like [Petitioner], and 'creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.'" *Id.* (quoting *Jennings*, 583 U.S. at 303).

60. Therefore, as several districts courts have recently concluded, reading the plain text of § 1225(b)(2)(A), employing canons of statutory interpretation, consulting contemporaneous and

longstanding agency interpretations of the statute, and applying precedent all lead to a single conclusion: noncitizens who present in the United States without having been admitted and were subsequently arrested inside the United States cannot be subject to mandatory detention under § 1225(b)(2)(A). Petitioner's detention is therefore governed by § 1226(a).

II. Petitioner's Detention Without an Individualized Determination Violates the Procedural Due Process Protections of the Fifth Amendment

61. Respondents' detention of Mr. Villanueva-Milla under § 1226(a) after having consented to the dismissal of his removal proceedings in 2023 and without having made an individualized determination that such detention was warranted violates the procedural due process protections of the Fifth Amendment.

62. "'[T]he Fifth Amendment entitles noncitizens to due process of law,' 'whether their presence here is lawful, unlawful, temporary, or permanent.'" *Savane v. Francis*, 801 F. Supp. 3d 483, 491 (S.D.N.Y. 2025) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020)). "The Second Circuit applies the *Mathews v. Eldridge* balancing test when determining the adequacy of process in the context of civil immigration confinement." *Id.* at 493 (citation omitted). "In determining what procedures are required under the Fifth Amendment, the Court must balance: '(1) the private interest that will be affected by the official action; (2) the 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.'" *Id.* (quoting *Velasco Lopez*, 978 F.3d at 851).

63. "[T]he private interest at stake—'Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.'" *Id.* (quoting *Zadvydas*, 533 U.S. at 690). "A person's liberty cannot

be abridged without 'adequate procedural protections.'" *Lopez Benitez*, 795 F. Supp. 3d at 492 (quoting *Zadvydas*, 533 U.S. at 690).

64. Before the ICE can detain a noncitizen under § 1226(a), the agency must make an individualized determination that detention is warranted. *See Lopez Benitez*, 795 F. Supp. 3d at 492-93; *Tumba*, 2025 WL 3079014, at *7; *Campbell*, 2025 WL 3538351, at *11; *Velesaca*, 458 F. Supp. 3d at 241; 8 C.F.R. § 1236.1(c)(8); *id.* § 236.1(c)(8). The Due Process Clause of the Fifth Amendment requires ICE to, at minimum, follow § 1226(a) and the regulatory requirements to make an individualized determination when detains a noncitizen pursuant to its discretionary authority. *See Lopez Benitez*, 795 F. Supp. 3d at 494; *Tumba*, 2025 WL 3079014, at *7; *see also Savane*, 801 F. Supp. 3d at 491 ("Petitioner's due process rights were violated because Respondents did not afford Petitioner any process at all before detaining him.").

65. Respondents did not make an individualized determination that Mr. Villanueva-Milla was a danger or a flight risk before detaining him. Mr. Villanueva was therefore "'entitled to more process than he received' pursuant to § 1226(a) and its implementing regulations." *Lopez Benitez*, 795 F. Supp. 3d at 495 (quoting *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. 2025)).

66. Moreover, DHS chose not to detain Mr. Villanueva-Milla during his prior removal proceedings and joined Mr. Villanueva-Milla's motion to dismiss his removal proceedings in 2023, which the immigration court granted. Respondents have not pointed to any changed circumstances that warrant his current detention during his pending removal proceedings.

67. Due process requires, at minimum, notice and an opportunity to be heard as to why detention is now warranted prior to the deprivation at liberty at hearing before a neutral adjudicator. *See, e.g.*, *Torres-Jurado v. Biden*, No. 19-cv-3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct.

29, 2023) (explaining that, in parole revocation, "due process, at a minimum" requires the government to afford meaningful notice and an opportunity to be heard and that the opportunity must be meaningful) (citing *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)); *Valdez,* 2025 WL 1707737, at *4 (ordering release of petitioner re-detained after an immigration court hearing and concluding "respondents ongoing detention of petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights"); *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment."); *Singh v. Andrews*, No. 25-cv-801, 2025 WL 1918679 at *20 (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").

68. On the second *Mathews* factor, the risk of erroneous deprivation is exceedingly high. Indeed, "[t]he purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty." *Lopez Benitez*, 795 F. Supp. 3d at 495. And now, Mr. Villanueva-Milla is being detained without the opportunity to seek bond despite having been previously permitted to be at liberty while his prior removal proceedings were ongoing. Thus, the risk that he is being detained despite not being a danger or flight risk—and therefore, being detained erroneously—is exceptionally high.

69. The third *Mathews* factor—the government's interest—also favors Petitioner. The government has no interest in detaining a noncitizen who is not a danger to the community or a

flight risk. *See id.* at 495–96. Requiring the government to follow the statute and its own regulations to ensure that a noncitizen's detention is warranted advances the government's interests.

70. In sum, all three *Mathews* factors favor Mr. Villanueva-Milla. Respondents' detention of him without any individualized assessment as the statute and regulations require and without any changed circumstances warranting his detention therefore violates the procedural due process protections of the Fifth Amendment.

III. Petitioner's Detention Violates the Substantive Due Process Protections of the Fifth Amendment

71. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. Civil detention is only permissible under the Due Process Clause for "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The only legitimate purposes for immigration detention are to protect against a risk of flight or danger to the community. *See id.*

72. Mr. Villanueva-Milla is not a flight risk nor is he a danger to the community. Respondents therefore have no legitimate nonpunitive reason for detaining him.

73. Additionally, under the *J.O.P.* Settlement, Mr. Villanueva-Milla cannot be removed from the United States until USCIS adjudicates his asylum application, and DHS is required to join or non-oppose any motion from Mr. Villanueva-Milla's to dismiss or terminate his removal proceedings while his asylum application remains pending.

74. Accordingly, Mr. Villanueva-Milla's detention is unlawfully punitive, and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

IV. The Proper Remedy is Petitioner's Immediate Release or, In the Alternative, a Burden-Shifted Bond Hearing

75. Because Mr. Villanueva-Milla was detained without an individualized assessment as to whether his detention was warranted, the proper remedy is his immediate release, as several courts in this District have ordered in similar cases. *See, e.g.*, *Tumba*, 2025 WL 3079014, at *8 ("The Court has determined that the Government violated Petitioner's procedural due process rights under the Constitution, and she is therefore entitled to release."); *Lopez Benitez*, 795 F. Supp. 3d at 499; *Campbell*, 2025 WL 3538351, at *13; *Yao*, 2025 WL 3653433, at *12; *see also id.* (collecting cases).

76. In the alternative, the Court should order Respondents to provide Mr. Villanueva-Milla with a bond hearing under § 1226(a) with the burden on the government to establish that he is a danger to the community or a flight risk that cannot be mitigated by bond, with alternatives to detention and ability to pay considered. It is the "overwhelming consensus of judges in this District" that the Due Process Clause requires the government to bear the burden of proof by clear and convincing evidence regardless of the length of detention. *Roman v. Decker*, No. 20-cv-6752, (AJN), 2020 WL 5743522, at *2 (S.D.N.Y. Sept. 25, 2020) (citation omitted); *see also Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) ("There has emerged a consensus view that where, as here, the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified.") (collecting cases); *P.M. v. Joyce*, No. 22-cv-6321 (VEC), 2023 WL 2401458, at *3 (S.D.N.Y. Mar. 8, 2023) ("[N]either the Circuit's decision in *Velasco Lopez* nor any other binding appellate authority overrules the overwhelming consensus of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden to justify continued detention of a noncitizen who is detained pursuant to § 1226(a), even absent prolonged detention.") (quoting *Banegas v. Decker*, No. 21-cv-

2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (cleaned up)); *Quintanilla v. Decker*, No. 21-cv-417, 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (collecting cases).

77. Several judges in this District have also held that due process requires the immigration court to consider alternatives to detention and ability to pay. *See, e.g., Marroquin v. Genalo*, No. 24-cv-6376 (MMG), 2025 WL 3241161, at *3 (S.D.N.Y. Nov. 20, 2025) (holding that all three *Mathews* factors favor "require[ing] an immigration judge to consider alternatives to detention when evaluating whether Petitioner poses a danger to the community"); *Hernandez v. Decker*, No. 18-cv-5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y. July 25, 2018) (holding that the Constitution compels "consideration of . . . alternatives to detention"); *Fernandez Aguirre v. Barr*, No. 19-cv-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (observing that requiring the consideration of alternatives to detention "track[s] the framework for pretrial detention in the criminal context, where the purpose of considering alternatives is to determine whether measures less intrusive than detention can achieve the same goal (reasonably assuring the safety of the community").

78. Lastly, if the Court declines to order immediate release or a burden-shifted bond hearing, the Court should order Respondents to provide Mr. Villanueva-Milla with a bond hearing before an impartial adjudicator in which he bears the burden.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Unlawful Detention Under the INA
8 U.S.C. § 1226(a)

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

80. Respondents are unlawfully detaining Mr. Villanueva-Milla without a bond hearing under § 1225(b)(2), a statute that does not apply to him. His detention is governed by § 1226(a),

which requires Respondents to make an individualized determination before exercising their discretion to detain him and, if he remains detained, to give him a bond hearing. Respondents did not and have not conducted an individualized determination as to whether Mr. Villanueva-Milla should be detained.

81. Therefore, Petitioner is being detained in violation of the INA. The proper remedy is Petitioner's immediate release subject to the conditions at which he was at liberty before he was detained or a bond hearing.

SECOND CAUSE OF ACTION
Unlawful Detention in Violation of Due Process
U.S. Const. amend. V

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

83. Respondents are unlawfully detaining Mr. Villanueva-Milla without a bond hearing under § 1225(b)(2), a statute that does not apply to him. His detention is governed by § 1226(a). The Due Process Clause of the Fifth Amendment requires Respondents to, at a minimum, make an individualized determination as to whether Mr. Villanueva-Milla should be detained. Respondents did not and have not done so.

84. Respondents' failure to conduct an individualized determination under § 1226(a) constitutes a due process violation.

85. Moreover, after Respondents had previously decided to allow Mr. Villanueva-Milla to be at liberty during his prior removal proceedings before the proceedings were dismissed in 2023 upon a joint motion, Respondents have not pointed to any changed circumstances that warrant Mr. Villanueva-Milla's current detention. Due process requires, at minimum, notice and opportunity to be heard as to why detention is now warranted at a hearing before an impartial adjudicator before Respondents can detain a noncitizen who was previously at liberty.

86. The proper remedy is Petitioner's immediate release subject to the conditions at which he was at liberty before he was detained or a bond hearing.

THIRD CAUSE OF ACTION
Detention Without Legitimate Government Justification
in Violation of Substantive Due Process
U.S. Const. amend. V

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

88. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. Civil detention is only permissible under the Due Process Clause for "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 533 U.S. at 690 (quoting *Foucha*, 504 U.S. at 80). The only legitimate purposes for immigration detention are to protect against a risk of flight or danger to the community. *See id.*

89. Mr. Villanueva-Milla is not a flight risk nor is he a danger to the community, especially due to the protections of the *J.O.P.* Settlement. Respondents therefore have no legitimate nonpunitive reason for detaining him. Accordingly, Mr. Villanueva-Milla's detention is unlawfully punitive, and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

90. The proper remedy is his immediate release subject to the conditions at which he was at liberty before he was detained.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;

3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner subject to the conditions at which he was at liberty before he was detained, or, in the alternative, ordering a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered, or, in the alternative, an individualized bond hearing before an impartial adjudicator at which Petitioner bears the burden;

4. Enjoin Respondents from invoking an automatic stay under 8 C.F.R. § 1003.19(i)(2) in the event that an immigration judge grants Petitioner bond after a constitutionally adequate bond hearing, *see Rueda Torres v. Francis*, No. 25-cv-8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2023); *Obregon v. Francis*, No. 25-cv-9465 (KPF), 2025 WL 3465517, at *1 (S.D.N.Y. Dec. 2, 2025); *Quispe-Sulcaray*, No. 25-CV-9908 (VEC), 2025 WL 3501207, at *2 (S.D.N.Y. Dec. 7, 2025); *Perez Augustin v. Joyce*, No. 25-cv-10122 (AT), 2025 WL 3564494, at *4 (S.D.N.Y. Dec. 12, 2025);

5. Enjoin Respondents from re-detaining Petitioner absent notice and opportunity to be heard at a pre-deprivation, constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's re-detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7. Grant any other and further relief that this Court deems just and proper.

Dated: February 2, 2026
Brooklyn, New York

Respectfully Submitted,

/s/ Anna K. Jessurun

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