UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOPEZ ASUNCION, Nelson David,

Petitioner,

v.

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

FRANCIS, LaDeon,
in his official capacity as Acting Field Office Director, New York Field Office, U.S. Immigration and Customs Enforcement;

LYONS, Todd,
in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

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

BONDI, Pamela,
in her official capacity as U.S. Attorney General;

Respondents.

Civil Action No. 26-cv-00606

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Nelson David Lopez Asuncion respectfully seeks issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner alleges in support of his petition:

PRELIMINARY STATEMENT

1. Respondents and their agents took Mr. Lopez Asuncion into custody in or around May 2025. They charged him with removal from the United States under 8 U.S.C. § 1182(a)(6)(A)(i), for being in the country without having been admitted or paroled. They presently detain Mr. Lopez Asuncion at the Orange County Correctional Facility, in Goshen, New York.

2. Upon information and belief, Respondents detained Mr. Lopez Asuncion under their new view that individuals who have not been admitted into the United States are subject to mandatory detention and ineligible for release on bond. The U.S. Department of Homeland Security ("DHS") adopted this reinterpretation of the immigration detention statutes in July 2025. The Executive Office of Immigration Review ("EOIR") followed suit two months later when the Board of Immigration Appeals ("BIA") issued *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). *Yajure Hurtado* prohibits immigration judges from conducting bond hearings for any individual alleged to be inadmissible from the United States. *See id.* at 228. The DHS and EOIR's decades-upending reinterpretation of the immigration detention statutes has been soundly rejected by the federal district courts, including by judges within the Southern District of New York. *See, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 498 (S.D.N.Y. 2025).

3. Respondents have detained Mr. Lopez Asuncion for over seven months without providing him a bond hearing. Respondents' initial detention of Mr. Lopez Asuncion violated the plain language of the Immigration and Nationality Act ("INA"). Title 8 § 1225(b)(2)(A) does not apply to individuals like Mr. Lopez Asuncion who were not "seeking admission" at the time DHS took them into immigration custody. Such individuals are instead subject to 8 U.S.C. § 1226(a)-detention, which allows for release on conditional parole or bond, and requires an individualized

determination prior to an immigration arrest. Respondents' erroneous application of Section 1225(b)(2)(A) to Mr. Lopez Asuncion violates the INA, the Administrative Procedures Act ("APA"), and his due process rights under the U.S. Constitution.

4. Respondents' ongoing detention of Mr. Lopez Asuncion—over seven months without any review of whether his detention is justified—further violates his due process rights. Regardless of whether Mr. Lopez Asuncion is held under a discretionary or mandatory detention provision, his detention has become unreasonably prolonged such that he is due additional process. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) ("[I]ndividuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by the ordinary bail hearing."); *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024) ("[A] noncitizen's constitutional right to due process precludes his unreasonably prolonged detention under [8 U.S.C. §] 1226(c) without a bond hearing.").[1]

5. Mr. Lopez Asuncion respectfully requests that this Court issue a writ ordering Respondents to immediately and unconditionally release him from custody. He also asks this Court to enjoin his transfer outside of this District during the pendency of the petition. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. N.Y. Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). Given the prolonged nature of his ongoing detention, Mr. Lopez Asuncion alternatively requests the Court to issue an order to show cause and hold a hearing

[1] Like 8 U.S.C. § 1225(b)(2)(A), 8 U.S.C. § 1226(c) mandates a qualifying noncitizen's detention for the entirety of their removal proceedings and does not afford any statutory or regulatory right to a bond hearing.

pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, at which Respondents are required to show why their initial and continued detention of Mr. Lopez Asuncion is not unlawful.

PARTIES

6. Petitioner Nelson David Lopez Asuncion is alleged to be a citizen of El Salvador. DHS officials detained him in or around May 2025. They took him into custody at the Orange County Correctional Facility. Petitioner has not received and is unable to obtain review of his custody by an immigration judge, pursuant to *Yajure Hurtado*.

7. Respondent Paul Arteta is sued in his official capacity as the Sheriff of Orange County, New York, and the Warden of the Orange County Correctional Facility. Respondent Arteta is the immediate custodian of Mr. Lopez Asuncion.

8. Respondent LaDeon Francis is sued in his official capacity as the Acting Field Office Director for the New York Field Office of the U.S. Immigration and Customs Enforcement ("ICE"). Respondent Francis is administratively responsible for detention decisions in the New York area, which includes the Orange County Correctional Facility.

9. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons and ICE are responsible for the detention of alleged noncitizens during the pendency of their removal proceedings.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. Respondent Noem and DHS execute the country's immigration laws and direct the actions of component agencies, including ICE.

11. Respondent Pamela Bondi is sued in her official capacity as the U.S. Attorney General. As the head of the U.S. Department of Justice ("DOJ"), Respondent Bondi oversees the

Executive Office of Immigration Review, which interprets the Immigration and Nationality Act and presides over removal and custody proceedings.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction pursuant to 5 U.S.C. § 706 (Administrative Procedures Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

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

14. Venue is proper in this District under 28 U.S.C. §§ 1391 and 2241 because Mr. Lopez Asuncion is detained at the Orange County Correctional Facility, which is located within this District.

STATEMENT OF FACTS

15. Respondents detained Mr. Lopez Asuncion in or around May 2025. They encountered Mr. Lopez Asuncion while searching for another person. Respondents charged Mr. Lopez Asuncion with removal as a noncitizen who has not been lawfully admitted into the United States. They took him into custody at the Orange County Correctional Facility, where he is presently detained. Ex. A, U.S. Immigr. & Customs Enf't, *Online Detainee Locator System*, https://locator.ice.gov/odls/#/search (last accessed Jan. 18, 2026). Respondents have not provided Mr. Lopez Asuncion any individualized determinations of his detention in the over seven months that he has been detained.

16. While in detention, Mr. Lopez Asuncion has progressed through removal

proceedings. An immigration judge ordered him removed on December 18, 2025. Ex. B, Dec. & Orders of the Immigr. Judge, *In re Nelson David Lopez-Asuncion*, A220-474-728 (Immigr. Ct., New York, New York Dec. 18, 2025). He submitted a timely notice of appeal to the BIA on December 19, 2025. Ex. C, Filing Receipt for Appeal or Mot., *In re Nelson David Lopez-Asuncion*, A220-474-728 (B.I.A. Jan. 6, 2026).

LEGAL BACKGROUND

Immigration Detention Framework

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

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while individuals who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

19. Second, the INA provides for mandatory detention of individuals subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under Section 1225(b)(2).

20. Last, the INA provides for the detention of individuals who have been ordered removed, first mandatory and then discretionary, *see* 8 U.S.C. § 1231(a)–(b).

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

22. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and

containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C. § 1226(a)(2)(A)–(B).

23. Under the Section 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"). If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

24. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings*, 583 U.S. at 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). Section 1225(b) mandates detention for those noncitizens subject to the provision. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

25. For decades after the enactment Sections 1226(a) and 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under Section 1226(a) rather than 1225(b)(2). *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). As the Supreme

Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 287-89.

26. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected a well-established understanding of the statutory framework.[2] Reversing decades of established practice, the policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under Section 1225(b)(2)(A), regardless of when a person is apprehended. The policy categorically applies to individuals, regardless if they have resided in the United States for months, years, or even decades.

27. On September 5, 2025, the BIA adopted this same position in a published decision, *Yajure Hurtado*. The BIA held that all individuals charged as being inadmissible from the United States are subject to detention under Section 1225(b)(2)(A) and ineligible for release on bond.

28. Since Respondents adopted their new policy, almost every district court that has confronted this issue has rejected this new interpretation. *See* Kyle Cheney, *Hundreds of Judges Reject Trump's Mandatory Detention Policy, With No End in Sight*, Politico, https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494 (Jan. 5, 2026). The vast majority of judges "has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation,

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

legislative history, and longstanding agency practice." *Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025).[3]

29. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. The government's recently adopted position also ignores the text of Section 1225(b)(2). For Section 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of

[3] *See, e.g., Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz,* 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-CV-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogllo Chafla v. Scott*, 2:25-CV-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25- CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

present-tense action." *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of Section 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

30. The legislative history further shows that Section 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after the statutes were enacted, the former Immigration and Naturalization Service and EOIR issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

32. Amendments to Section 1226 that occurred just this year through the Laken Riley Act, § 119, 139 Stat. 3, also confirm the widespread understanding that individuals not admitted or paroled are detained pursuant to Section 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under Section 1226(c)(1)(E). If every individual who was present without being admitted was already subject to mandatory detention under Section 1225(b)(2), Congress would have had no reason to pass an entirely new provision in order to make those individual subject to mandatory detention under Section 1226(c)(1)(E) if they committed one of the listed crimes.

33. Mr. Lopez Asuncion was arrested in the United States without notice or any individualized determination of whether his detention was warranted. He was not "seeking admission" at the time of that detention. 8 U.S.C. § 1225(b)(2)(A). He is not therefore subject to Section 1225(b)(2)(A) detention, and his continued detention under that statute is *ultra vires*.

Procedural Due Process Rights

34. The Due Process Clause of the Fifth Amendment entitles individuals, including noncitizens, to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (citations omitted).

35. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-cv-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954)).

36. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

37. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez*, 978 F.3d at 851.

38. In light of a noncitizen's due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and danger to the community. *See Velesaca*, 458 F. Supp. 3d at 235.

39. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 795 F. Supp. 3d at 492 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez*, 978 F.3d at 851); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (noncitizens in immigration custody have an arguably even greater liberty interest in remaining

out of detention than criminal parolees who require due process protection).

40. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief." *Id.* The mandatory detention of those for whom the government has not conducted an individualized assessment creates a high risk of erroneous deprivation. *See Velasco Lopez*, 978 F.3d at 857 (noting the government can have no interest "in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community").

41. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Id.* at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Contrary to Respondents' blanket administration of a mandatory detention policy, the substitute procedures—individualized determinations of flight or danger risk prior to detention—would serve, not hamper, the government's interest in preventing flight and reducing danger to the community. *See Velasco Lopez*, 978 F.3d at 855 ("When the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, . . . it separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees.");

42. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give

them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g.*, *Lopez Benitez*, 795 F. Supp. 3d at 497 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified).

43. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g.*, *Tumba Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025) (ordering petitioner's release because "her detention" lacked process and "was illegal from the start") Here, immediate release is appropriate because Respondents similarly did not conduct an individualized determination regarding Mr. Lopez Asuncion before they summarily detained him. *See, e.g.*, *Cuy Comes v. DeLeon*, No. 25-cv-9283, 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination).

44. In the alternative, Mr. Lopez Asuncion seeks, at a minimum, a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez*, 978 F.3d at 851. Should the Court order for a bond hearing, Mr. Lopez Asuncion requests for Respondents to be mandated to show that no alternatives to detention

may ameliorate any risks Mr. Lopez Asuncion presents and to consider his ability to pay any bond. *See id.*

Impact of Prolonged Detention

45. Beyond the process that is due to individuals initially detained without any individualized assessments, individuals held for prolonged durations in immigration detention are due further process. Such process is appropriate for individuals, like Mr. Lopez Asuncion, who have been detained for over six months. *See Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, 797 (W.D.N.Y. 2019) ("Courts in this Circuit have generally been skeptical of prolonged detention of removable immigrants, without process, lasting over six months.") (quoting *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018)) (internal alterations omitted). And it is applicable to individuals detained both under a discretionary or mandatory detention statute. *See Velasco Lopez*, 978 F.3d at 851-55 (applying *Mathews* to a Section 1226(a) prolonged detention claim and finding the individual was due additional process after prolonged detention); *Black*, 103 F.4th at 151-57 (same for a Section 1226(c)-prolonged detention claim).

46. The same *Mathews* test cautions for the provision of additional process. The "private interest affected" remains the "most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi*, 542 U.S. at 529). The risk of an erroneous deprivation favors more process because the existing process—prolonged mandatory detention—provides no vehicle for an assessment of whether that detention is warranted. *See id.* at 852-54. And the government and public's interest lies in ensuring that the government does not detain those "it cannot show to be a poor bail risk for prolonged period of time." *Id.* at 855.

47. The relief for a finding of unjustified prolonged detention would be a bond hearing

at which the government must bear a clear and convincing burden that further detention is warranted and no alternatives to detention may resolve those risks. *See id.* at 855-57.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: INITIAL CIVIL IMMIGRATION DETENTION VIOLATES THE IMMIGRATION AND NATIONALITY ACT

48. Petitioner realleges and incorporates all preceding paragraphs.

49. Petitioner was not "seeking admission" at the time of his May 2025 immigration arrest. Respondents' application of 8 U.S.C. § 1225(b)(2)(A) to him is improper. Their detention of him through that provision is *ultra vires* and violates the Immigration and Nationality Act.

SECOND CAUSE OF ACTION: INITIAL CIVIL IMMIGRATION DETENTION VIOLATES THE ADMINISTRATIVE PROCEDURES ACT

50. Petitioner realleges and incorporates all preceding paragraphs.

51. Petitioner was not "seeking admission" at the time of his May 2025 immigration arrest. Respondents' application of 8 U.S.C. § 1225(b)(2)(A) to him is "not in accordance with law" and should be "set aside." 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION: INITIAL CIVIL IMMIGRATION DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

52. Petitioner realleges and incorporates all previous paragraphs.

53. Respondents detained Petitioner in May 2025 without performing any individualized determinations as to whether he posed a flight or danger risk necessitating detention. *See Zadvydas*, 533 U.S. at 690 (authorizing immigration detention only to prevent flight or danger to the community). Their doing so offends Petitioner's substantive due process right to receive notice and an opportunity to be heard, as well as his procedural due process rights to receive

procedures that adequately guard against his important interest in liberty.

FOURTH CAUSE OF ACTION: PROLONGED CIVIL IMMIGRATION DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

54. Petitioner realleges and incorporates all previous paragraphs.

55. Respondents have detained Petitioner without any justification for over seven months. Petitioner's detention has reached a prolonged duration, such that regardless of whether he is detained under a discretionary or mandatory detention statute, he is due additional process. Respondents' ongoing detention of Petitioner violates his procedural due process rights to receive procedures that adequately guard against his important interest in liberty.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;

3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty,

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within ten days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

   a. Respondents must bear the burden of establishing by clear and convincing evidence that continued detention is justified;

b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole, or electronic monitoring; and

c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.

5. Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ John H. Peng
John H. Peng, *Of Counsel*
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Albany, NY 12207
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Pro Bono Counsel for Petitioner

DATED: Jan. 22, 2026
Washington, D.C.

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

I, Jennifer Grant, am submitting this verification on behalf of Petitioner as his attorney. I, or my co-counsel, have discussed with the Petitioner the events described in the petition. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Jennifer Grant
Jennifer Grant
Legal Aid Society

DATED: Jan. 22, 2026
New York, N.Y.