UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Y.L.,

Petitioner,

v.

Kenneth GENALO, New York Field Office Director for U.S. Immigration and Customs Enforcement; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents;

Civil Action No. 26-807

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

Petitioner Y.L. ("Petitioner" or "Y.L.") brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States.

PRELIMINARY STATEMENT

1. Petitioner Y.L.[1] is an asylum seeker who came to the United States in August 2024 to seek safety due to threats of persecution and torture in Morocco that he received when he [redacted] After he entered the United States, he encountered immigration officials and was ultimately released on parole so that he could seek asylum. Since then, he has been complying with all instructions given to him, including timely filing an asylum application, attending regular check-ins with Immigration and Customs Enforcement (ICE) officials, and preparing to attend his immigration court hearings.
2. As part of his supervision by ICE, Y.L was also required to wear a GPS tracking ankle monitor. After some time wearing the monitor, he asked officers if the monitor could be removed. He was told to report to the immigration office on January 29, 2026 so that they could do so. However, when he arrived at their offices, rather than remove the ankle monitor, they suddenly detained him.
3. Y.L.'s detention appears to be based on Respondents' campaign to detain as many individuals as possible who are otherwise attending lawful immigration court hearings and check-ins, and to misclassify such individuals like Y.L., who entered the United States without inspection, as subject to "mandatory detention" and thus ineligible for

[1] Due to the sensitive nature of his asylum claims, Petitioner Y.L. is concurrently filing a motion to proceed via initials.

bond. This position, however, is one that that hundreds of district courts across the country have now found to be a violation of the Immigration and Nationality Act ("INA").

4. Y.L. has no other remedy at law than to petition this Court and request the Court order Respondents to immediately release him from immigration custody or, in the alternative, to order an individualized bond hearing at which the government must bear the burden of proving by clear and convincing evidence that his re-detention is justified by changed circumstances. 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.

PARTIES

5. Petitioner Y.L. is a 39 year-old man who was detained by Respondents at 26 Federal Plaza on January 29, 2026. His removal proceedings are pending at the 26 Federal Plaza Immigration Court in New York City, New York.
6. Respondent KENNETH GENALO is named in his official capacity as the Field Office Director for ICE's New York Field Office. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders and is the legal custodian of Petitioner.
7. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ, including 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.

8. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE. 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 Petitioner's detention and removal. As such, she is a legal custodian of Petitioner.

9. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and 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 Genalo, and he is legally responsible for Petitioner's detention and removal.

JURISDICTION AND VENUE

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

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

12. Venue is proper in this district under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Y.L. is detained at 26 Federal Plaza, within this district; the ICE office that controls the location of his detention is based in New York City; Y.L.'s immigration proceedings are proceeding

here; and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

13. There is no statutory requirement of administrative exhaustion before an immigration detention can be challenged in federal court by a writ of habeas corpus. *See Quintanilla v. Decker*, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)). While courts generally require exhaustion purely as a "prudential matter," those prudential concerns are excused when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003). Y.L.'s case satisfies any one of these four exceptions. Not only will he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but an administrative appeal would be futile and unable to provide a genuine opportunity for adequate relief.

14. On September 5, 2025, the Board of Immigration Appeals ("BIA") decided *Matter of Yajure Hurtado*, a precedential decision holding that all noncitizens who, like Y.L., allegedly have not been admitted to the United States are per se ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). This is true even though the vast majority of district courts in the country that have heard a challenge to the BIA's reading of the statute have rejected it out of hand. The BIA's enforcement of *Yajure Hurtado* means that Y.L.'s case satisfies the first and third exceptions to exhaustion, as there are no genuine administrative remedies available that could provide him with the

relief he seeks. This is in fact a quintessential case of futility. Because binding BIA precedent mandates that Y.L. be detained, even if DHS cannot prove that he is a flight risk or a danger, Y.L. can turn only to this Court to challenge his detention.

15. In addition, Y.L. satisfies the fourth exception to prudential exhaustion because he has raised a substantial constitutional question that ICE's detention violates his rights under the Due Process Clause, and that a bond hearing before an immigration judge will not cure the unlawful detention. Even if Y.L. is given a bond hearing, the BIA would misapply the law and force Y.L. to bear the burden of proof in his bond hearing. *See Matter of R A V P*, 27 I&N Dec. 803, 804 (BIA 2020). Instead, to properly comply with due process, the burden of proof at any bond hearing should be borne by the government. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

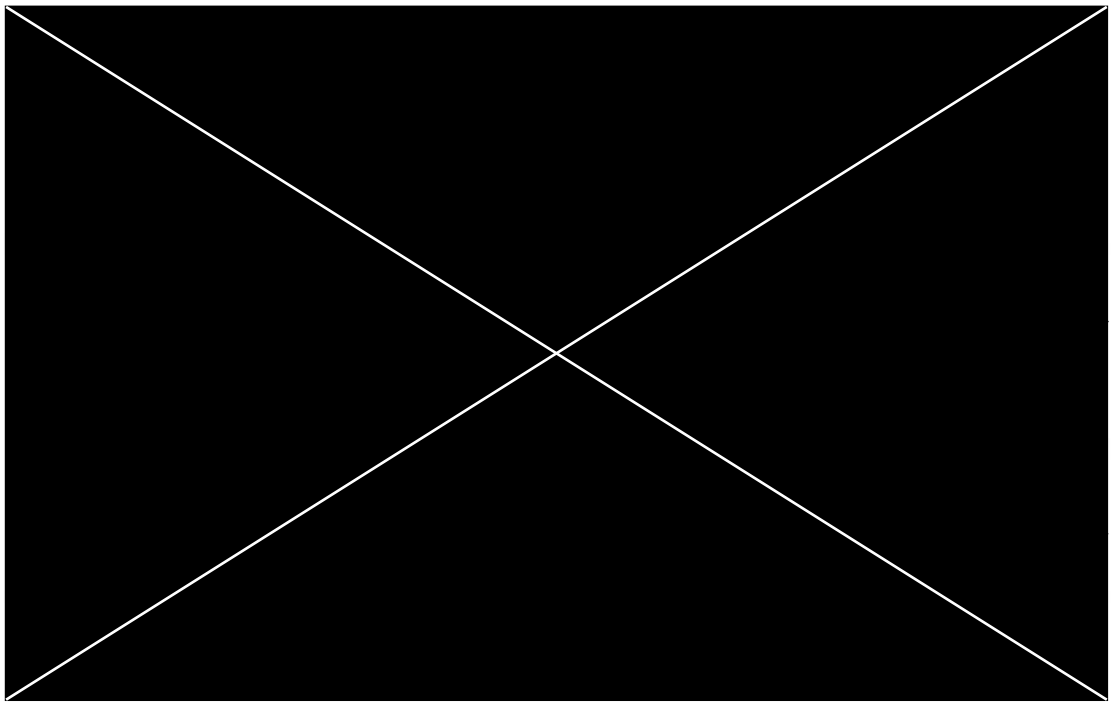
16. Y.L. is a 39-year-old asylum seeker from Morocco. He fled to the United States after being [redacted]

Procedural History

17. Y.L. is alleged to have entered the U.S. without inspection at or near Calexico, California on or about August 29, 2024. He was later encountered by immigration officials and on or around September 30, 2024, DHS served a Notice to Appear ("NTA") on Y.L. initiating removal proceedings. Ex. 1 (NTA).

18. On October 12, 2024, DHS issued an Interim Notice Authorizing Parole, paroling Y.L. from custody pursuant to 8 USC § 1182(d)(5)(A). Ex. 2 (Notice of Parole). As a result, Y.L. was released from ICE custody and relocated to Pennsylvania, and eventually New York City.

19. On December 16, 2024, Y.L. filed Form I-589, Application for Asylum and for Withholding of Removal with the New York Immigration Court, within the one-year filing deadline. Y.L. seeks protection on the basis of his political opinion, membership in a particular social group, and under the torture convention. [redacted]



20. Throughout his removal proceedings, Y.L. attended check-ins with ICE, first at 26 Federal Plaza and later in Queens, New York. He was also required to wear a GPS monitor as a condition of his release from ICE detention. He was planning to attend his immigration court hearing scheduled for March 4, 2026. *See* Ex. 3 (Notice of Hearing).

21. On January 27, 2026, Y.L. attended a scheduled check-in. As requested at a prior check-in, he turned over his passport to the ICE officer. Y.L. asked the officer if it would be possible

to have his GPS monitor removed, and the officer responded that she would have to confer with another officer.

22. On January 28, 2026, the officer from the previous day's check-in called Y.L. to notify him that he should report to 26 Federal Plaza on January 29, 2026, at 9:00AM to have his GPS monitor removed.

23. Y.L. reported to 26 Federal Plaza as instructed on January 29, 2026, and rather than have his ankle monitor removed, he was detained.

24. On January 29, 2026, Y.L. called his immigration attorney at Brooklyn Defender Services to advise her that he had been detained and that he was being held at 26 Federal Plaza. They last spoke at approximately 5:00 p.m., at which time he reported he was still being detained at 26 Federal Plaza.

25. Just prior to filing this petition, counsel checked his location in the ICE detainee locator, which stated that he was in the "NYC Hold Room," which counsel understands to be the 26 Federal Plaza detention facility in New York, N.Y. *See* Ex. 4 (ICE detainee locator printout at 8:00 p.m. on Jan. 29, 2026).

Criminal History

26. Y.L. has no criminal convictions. He has been arrested once, and his case remains pending in Kings County Criminal Court.

27. On October 26, 2025, a fight occurred on the sidewalk outside the shelter where he resided at the time. He and another person were arrested but Y.L. maintains his innocence of all charges. Following his arraignment, Y.L. was released on his own recognizance.

28. On January 21, 2026, the prosecutors office dismissed the sole felony charge (assault in the second degree) that had been brought and the case was reduced to a misdemeanor. Y.L. is next scheduled to appear in Kings County Criminal Court on March 26, 2026.

LEGAL BACKGROUND

Immigration Detention Framework and Bond Hearing Eligibility

29. There are two mutually exclusive statutes of the INA that govern the detention of alleged noncitizens with pending removal proceedings that are relevant here: 8 U.S.C. §§ 1225 and 1226. *See J.U.*, 2025 WL 2772765, at *4. 61. The first statute—specifically, 8 U.S.C. § 1225(b)(2)—applies only at the border. Under this statute, "applicants for admission" who are "seeking admission" into the United States are placed into expedited removal proceedings and subject to detention without a bond hearing.[2] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *Id.* at 288.

30. For individuals who are arriving at the United States border seeking admission, DHS also has discretion to place such individuals in removal proceedings under 8 U.S.C. § 1229a. See *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) ("DHS has discretion to put aliens in section 240 removal proceedings even though they may also be subject to expedited removal . . . ."). DHS may then decide whether to take that individual into

[2] Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-cv-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

custody for the pendency of removal proceedings or release them into the United States on parole with orders of supervision.

31. The second statute—8 U.S.C. § 1226(a)—applies inside the United States. Under this statute, individuals who are arrested and already inside the United States are generally placed into removal proceedings, during which an IJ (and later, potentially, the BIA and a U.S. Court of Appeals) will decide whether the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, or adjustment of status. This process can take months or even years. The detention of individuals arrested inside the United States and placed in removal proceedings is subject to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). Most of these individuals are eligible for release on bond under § 1226(a), and they are consequently entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

32. The Supreme Court has recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees: In 2003, in *Demore v. Kim*, the Supreme Court held that, under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, only if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal adjudication. 538 U.S. 510, 513 (2003). This exception is not applicable here because Y.L. has not been convicted of a crime.

33. Section 1226 was amended earlier this year by the Laken Riley Act ("LRA"). Pub. L. No.119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). Congress passed the LRA to expand mandatory detention under § 1226(c). *See id.* The LRA amendments require detention of noncitizens who have been charged as inadmissible under §§ 1182(a)(6)(A) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation), and who have also been arrested for, charged with, or convicted of certain crimes—expressly contemplating the inclusion of people who entered without inspection within the scope of § 1226 detention. *Id.; see Romero v. Hyde*, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); *Sampiao v. Hyde*, 2025 WL 2607924, at *22 (D. Mass. Sept. 9, 2025). The LRA amendments are not applicable here because Y.L. has never been arrested for, charged with, or convicted of any crime contemplated by the LRA.

34. This system provides that individuals arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings. It has existed in essentially its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587.

Standards governing parole release and revocation.

35. DHS has the "discretion [to] parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for the urgent humanitarian reasons or significant public benefit any alien applying for admission the United States." 8 U.S.C. § 1182(d)(5)(A). Federal regulations specify that DHS may only release individuals

on humanitarian parole if they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). These requirements—flight risk and danger—reflect constitutional constraints, since only individuals who pose a flight risk or danger may be civilly detained. *See Zadvydas*, 533 U.S. 690. The regulations contemplate parole for specific groups of individuals meeting these criteria including those "who have serious medical conditions in which continued detention would not be appropriate" or individuals "whose continued detention is not in the public interest." 8 C.F.R. § 212.5(d)(b)(1), (5).

36. When granting parole, DHS officers have discretion to require "reasonable assurances that the [noncitizen] will appear at all hearings and/or depart the United States when required to do so." 8 C.F.R. § 212.5(d). They also must "apply reasonable discretion" when granting parole and consider: "(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I-352 in such amount as may be deemed appropriate; (2) Community ties such as close relatives with known addresses; and (3) Agreement to reasonable conditions (such as periodic reporting of whereabouts)." *Id.*

37. Just as there are regulations governing DHS's process of granting parole, there are regulations and constitutional limitations regarding revocation. To revoke parole, a DHS official with authority must decide either that "the purpose for which parole was authorized" has been "accomplish[ed]" or that "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen]" in the United States." 8 C.F.R. § 212.5(e)(2)(i). The regulations contemplate only two ways parole may be terminated: "automatic" and "on notice." 8 C.F.R. § 212.5(e). Parole automatically terminates—meaning no notice is required—only where (1) the noncitizen parolee departs from the

United States or (2) the time period for which parole was authorized, if limited in time, expires. *Id.* § 212.5(e)(1). The regulations further require, however, that if a "removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless . . . the public interest requires that the alien be continued in custody." 8 C.F.R. § 212.5(e)(2)(i).

38. In all other circumstances, written notice is required to terminate parole. *Id.* § 212.5(e)(2)(i). The regulations indicate that officers terminate parole with "written notice to the alien" upon "accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials . . . neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." *Id.*

39. In addition, a person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

40. The *Mathews* test requires a process sufficient to mitigate the risk of erroneous deprivation of Petitioner's liberty interest. Revocation of release from confinement, even civil

immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole, probation, and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

41. Due process requires, at a minimum, notice and an opportunity to respond prior to the deprivation of liberty at a 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 to *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)); *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (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-00801, 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").

The Burden of Proof in Immigration Court Bond Hearings

42. Unlike individuals detained at the border under § 1225, individuals who are detained within the United States under 8 U.S.C. § 1226(a) are not subject to mandatory detention and thus may be detained or released, pursuant to ICE discretion. 8 C.F.R. § 236.1(d)(1); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (noting that the government "do[es] not dispute that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination").

43. If detained, the noncitizen may then request review of ICE's detention determination at a bond hearing. 8 C.F.R. § 236.1(d)(1).

44. Neither the statute nor applicable regulations directly dictate the burden of proof in such proceedings. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1. In *In Re Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999), however, the BIA interpreted the regulations to hold that the noncitizen was required to prove that he was neither a danger to the community nor a flight risk. *Id.* Later cases broadened that holding to individuals like Y.L., who are subject to § 1226(a). *See In Re Guerra*, 24 I. & N. Dec. 37 (BIA 2006).

45. But the Supreme Court has consistently held that when the government seeks to hold individuals in civil detention, the government must justify their detention with clear and convincing evidence. *See, e.g., United States v. Comstock*, 560 U.S. 126, 129–31 (2010); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 432–33 (1979).

46. The Supreme Court has applied that standard to hearings regarding initial detention. *See*

Addington, 441 U.S. at 432–33 (applying clear and convincing standard to initial civil commitment hearing); *United States v. Salerno*, 481 U.S. at 751 (approving initial pretrial detention determination where justified by clear and convincing standard). Where the Supreme Court has dealt with custody redetermination, it has given no indication that the amount of time an individual had already been confined alters the burden placed on the government. *See Foucha*, 504 U.S. 71; *Comstock*, 560 U.S. 126. It is also 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. *See, e.g., Roman v. Decker*, 2020 WL 5743522, at *2 (S.D.N.Y. Sept. 25, 2020); *see also Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (collecting cases).

ICE Campaign to Re-Detain Law-Abiding Noncitizens and Expedite Their Removal

47. Y.L.'s arrest is part of a larger, aggressive effort by DHS to arrest and detain noncitizens at routine ICE appointments and immigration court hearings, including by redetaining individuals previously released without any new circumstances or individualized consideration

48. 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. Case 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 11, 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.*

49. In order to meet their daily quotas, ICE officers began targeting noncitizens regardless of their potential dangerousness or flight risk at ICE check-in appointments and immigration court hearings. *See* Gwynne Hogan, *ICE Turns Required Check-Ins Into Arrest Dragnet in Lower Manhattan*, THE CITY (June 3, 2025), https://www.thecity.nyc/2025/06/03/ice-arrest-dragnet-manhattan/ ("Reporters for THE CITY witnessed vehicles hauling away 16 people in handcuffs from an office where immigrants in deportation cases were summoned to sudden appointments.").

ARGUMENT

I. Section 1226(a) applies to ICE's detention of Y.L.

50. ICE's actions in detaining Y.L. on January 29, 2026, could only have been pursuant to its discretionary authority under 8 U.S.C. § 1226(a). Individuals detained within the United States under 8 U.S.C. § 1226(a) are not subject to mandatory detention and thus are detained pursuant to ICE discretion. *See* 8 C.F.R. § 236.1(d)(1); *Jennings*, 583 U.S. at 288 (observing that § 1226(a) governs the removal of noncitizens "once [they are] inside the United States").

51. The majority of judges in this district who have considered this question have held that

"[Section] 1225(b)(2)(A) does not apply to [a petitioner] who has been continuously present in the United States[.]" *Cuy Comes*, 2025 WL 3206491, at *2 (citations omitted); *Lopez Benitez*, 2025 WL 2371588, at *3 (holding that § 1225(b)(2) does not apply to noncitizen who "has been residing in the United States for more than two years at the time of his arrest and detention"); *McShane*, 2025 WL 3496361, at *3 (collecting cases that hold similarly); *see also Hyppolite v. Noem*, 2025 WL 2829511, at *7–8 (E.D.N.Y. Oct. 6, 2025) ("[A] noncitizen who has resided continuously in the United States since . . . 2022 . . . is subject to the discretionary provisions of § 1226(a), not the "mandatory" provisions of § 1225(b) as Respondents claim."); *Bravo Arizmendi v. Noem*, No. 25-cv-07056-AMD, ECF No. 6 (Order) (E.D.N.Y. Jan. 15, 2026) (holding that ICE's detention of petitioner in U.S. was pursuant to § 1226(a) and in violation of rights, and ordering petitioner's release).

52. Y.L. was detained in the United States on January 29, 2026. Under these circumstances, Y.L. may only be subject to detention as a matter of discretion under § 1226(a).

53. To the extent Respondents seek to justify Y.L.'s detention under 8 U.S.C. § 1225(b)(2)(A) by interpreting the statute as the BIA has done in *Yajure Hurtado*, 29 I. &. N. Dec. 216—*i.e.,* classifying all noncitizens who allegedly entered the United States without admission or parole as "seeking admission" and subject to mandatory detention under § 1225(b)(2)—judges in this district, and the vast majority of federal district court judges hearing this issue, have rejected such an assertion. For instance, in *Cuy Comes*, Judge Analisa Torres explained that such a "reading of § 1225(b)(2)(A)'s mandatory detention provision to apply to all inadmissible noncitizens present in the United States would render its text, which applies on its face only to certain noncitizens 'seeking

admission,' useless surplusage." 2025 WL 3206491, at *2; *see also J.U.*, 2025 WL 2772765, at *7 ("Respondent's novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with Supreme Court's prior statutory interpretations.").

54. Moreover, since Respondents adopted their new policy, "the overwhelming, lopsided majority have held that the law still means what it always has meant." *Barco Mercado v. Francis*, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025). As Judge Kaplan explained: "By a recent count, the central issue in this case – the administration's new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed – has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States." *Id.* (emphasis in original).

II. ICE Violated Y.L.'s Due Process Rights by Failing to Give a Notice and a Hearing with Individualized Review Prior to His Detention, Necessitating Immediate Release.

55. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (citation omitted). "Noncitizens are also entitled to challenge through habeas corpus the legality of their ongoing detention." *Velasco Lopez*, 978 F.3d at 850 (citation omitted).

56. "The Second Circuit has held that the *Mathews v. Eldridge* balancing test applies when determining the adequacy of process in the context of civil immigration confinement."

Valdez v. Joyce, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (citation omitted). "The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Id.* (citation omitted). Courts have continuously held that, when the government seeks to hold somebody in detention, it must justify its decision by clear and convincing evidence or risk erroneously depriving individuals of their liberty interests. *See Velasco Lopez*, 978 F.3d at 855–57.

57. *First*, as to the private interest, Y.L.'s detention invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851. "[ICE] is obligated to comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process." *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (citation omitted). Under § 1226(a), ICE must make an individualized determination as to whether a noncitizen "pose[s] a danger to property or persons," or is unlikely "to appear for any future proceeding." 8 C.F.R. §§ 1236.1(c)(8), 236.1(c)(8); *see also 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 such an individualized consideration, ICE chooses to detain the noncitizen pursuant to § 1226(a) pending removal proceedings, then the individual may ask for a bond redetermination hearing before the immigration judge." *Cuy Comes*, 2025 WL 3206491, at *4 (citing 8 C.F.R. § 1003.19). Here, upon information and belief given Respondents' policy to treat

all individuals who entered without inspection as subject to mandatory detention, no proper individualized review took place. And, as in *Chipantiza-Sisalema*, Respondents did not give Y.L. either notice or an opportunity to be heard on his detention prior to being detained. *See* 2025 WL 1927931, at *3.

58. *Second*, the risk of erroneous deprivation is significant here. "The 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." *Cuy Comes,* 2025 WL 3206491, at *5. Y.L. has been completely cooperative with Respondents since the time he was released on parole, attending check-in appointments as directed. He was arrested by Respondents while attending such a check-in, after Respondents misrepresented that he would have a GPS monitor removed. Although he had been arrested after intervening in a fight, the most serious of those charges had already been dismissed and he continued to check-in with ICE without issue while he was committed to proving his innocence in criminal court.

59. *Third*, the government's interest in Y.L.'s ongoing detention is minimal, as its discretion to detain individuals under § 1226 is only valid "where it advances a legitimate governmental purpose," such as "'ensuring the appearance of [noncitizens] at future immigration proceedings' and 'preventing danger to the community.'" *Valdez*, 2025 WL 1707737, at *4 (quoting *Zadvydas*, 533 U.S. at 690). "Where the noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is 'separate [ ] families and remove[ ] from the community breadwinners, caregivers, parents, siblings, and employees." *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024) (quoting *Velasco Lopez*, 978 F.3d at 854–55).

60. Thus, any purported governmental interest in Y.L.'s continued detention without an individualized assessment and pre-deprivation notice and hearing does not carry the weight of the *Mathews* factors. *Cuy Comes,* 2025 WL 3206491, at *5. "In light of the deprivation of [his] liberty ... the absence of any deliberative process prior to, or contemporaneous with, the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only vehicle for relief. It is, in essence, the most appropriate remedy." *Lopez v. Sessions*, 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018).

61. As judges within this district have held in multiple recent cases, the deprivation of Y.L.'s Due Process rights here entitles him to be immediately released from ICE's detention. *See, e.g.*, *Cuy Comes*, 2025 WL 3206491, at *6; *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (ordering release where the government did not properly exercise its discretion under § 1226(a)); *Hyppolite*, 2025 WL 2829511, at *12, 17 (same); *Kelly v. Almodovar*, 2025 WL 2381591, at *3–4 (S.D.N.Y. Aug. 15, 2025) (same); *Gonzalez v. Joyce*, 2025 WL 2961626, at *3, 5 (S.D.N.Y. Oct. 19, 2025) (same). Accordingly, this Court should similarly order that Y.L. be released immediately from ICE's custody and that he not be re-detained without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a).

62. In addition, it is unlawful for ICE to arrest a noncitizen who has been granted parole without complying with ICE's own regulatory requirements regarding the proper process for revocation of parole. Such violations require release. *See, e.g.*, *Munoz Materano v. Arteta,* No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *1 (S.D.N.Y. Sept. 12, 2025);

Mata Velasquez v. Kurzdorfer, No. 25-CV-493-LJV, 2025 LX 287077, 2025 WL 1953796, at *26 (W.D.N.Y. July 16, 2025) (citing Y-*Z-L-H v. Bostock*, 2025 LX 277386, 2025 WL 1898025, at *13 (D. Or. July 9, 2025)); *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (ordering release for a noncitizen granted parole but subsequently detained and finding he was held under 8 U.S.C. § 1226 rather than 1225 due to the passage of time in the United States on parole); *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) ("[A]n individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing."); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *21 (W.D.N.Y. May 2, 2025) ("In sum, because ICE did not follow its own regulations in deciding to re-detain [petitioner], his due process rights were violated, and he is entitled to release. And even if that were not so, he still would be released because he was not afforded even the minimal due process that protects everyone—citizens and noncitizens—in the United States."); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 LX 287077, 2025 WL 1953796, at *10 (W.D.N.Y. July 26, 2026) ("The government therefore does not have the authority to arrest a noncitizen who has been granted parole without properly terminating that parole."); *Chipantiza-Sisalema v. Francis*, 2025 WL No. 25 CIV. 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (ordering release where ICE detained noncitizen previously granted parole without notice or opportunity to be heard).

63. The proper remedy is release. The alternative, a bond hearing, cannot rectify the injury the Government has already done, and is doing now, to Y.L.'s Fifth Amendment rights. *Lopez Benitez v. Francis,* 795 F.Supp.3d 475, 497 ("[A bond hearing is] no substitute for

the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the decision to strip a person of the freedom that lies at the heart of the Due Process Clause."); *O.F.B. v. Maldonado*, No. 25-CV-6336 (HG), 2025 WL 3277677, at *8 (E.D.N.Y. Nov. 25, 2025) ("Here, the nature of the constitutional violation Petitioner sustained—i.e., the government's failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond—renders any post-deprivation review by an immigration judge inadequate."); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *32 (E.D.N.Y. Nov. 28, 2025) ("ICE caused Rodriguez-Acurio to be placed in custody in violation of her rights to procedural due process. The proper remedy for that unlawful detention is release."); *Campbell v. Almodovar*, No. 1:25-cv-09509 (JLR), 2025 WL 3538351, at *13 (S.D.N.Y. Dec. 10, 2025) ("[B]oth DHS's failure to follow its own regulations and its failure to afford Campbell the minimal process due under the Fifth Amendment violated Campbell's due process rights. Because of those failures, Campbell is entitled to release.").

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process)

64. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

65. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. CONST. amend. V.; *see generally Reno v. F*, 507 U.S. 292 (1993); *Zadvydas*, 533 U.S. 678; *Demore*, 538

U.S. 510. Due process protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

66. Respondents must comply with procedural due process requirements, even while exercising their discretionary authority to detain noncitizens. *See Velasco Lopez*, 978 F.3d at 848 (noting there are "important constitutional limitations" on detention during removal proceedings).

67. The Due Process Clause entitles Petitioner to meaningful process assessing whether his detention is justified. Respondents' sudden arrest and detention of Y.L. without an opportunity for him to contest his detention in front of a neutral adjudicator does not provide sufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See, e.g., Cuy Comes*, 2025 WL 3206491, at *6 (ordering immediate release of petitioner who was detained by immigration agents and arrested without cause on way home from work); *Alejandro v. Olson*, 2025 WL 2896348, at *9 (S.D. Ind. Oct. 11, 2025) ("Given that Respondents do not assert any other [statutory] basis for [petitioner's] detention and do not argue that he presents a flight risk or danger, the appropriate remedy is his immediate release."); *Lepe v. Andrews*, 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) (same).

68. Here, the government also made a reasoned decision to release Petitioner on parole. Petitioner's redetention and revocation of his release on parole violated the regulations and statutes governing parole, as the humanitarian factors that led to the parole grant were still in existence as Petitioner was continuing to seek asylum.

SECOND CAUSE OF ACTION:
Violation of the Due Process Clause of the Fifth Amendment (Substantive Due Process)

69. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

70. 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. The only proper purposes for immigration detention are to protect against a risk of flight or danger to the community.

71. The Fifth Amendment of the Constitution further guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

72. Petitioner is not a flight risk nor is he a danger to the community. Respondents' detention of Petitioner is punitive and a violation of his Constitutional right to Due Process under the Fifth Amendment.

THIRD CAUSE OF ACTION:
Violation of the Administrative Procedure Act; 5 U.S.C. §§ 702, 706

73. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

74. The Administrative Procedure Act ("APA") requires courts to "hold unlawful and set aside agency action" that is "not in accordance with law;" "contrary to constitutional right . . . in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

75. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex*

rel. Accardi v. Shaughnessy, 347 U.S. 260, 266, 268 (1954).

76. Respondents have violated the statutory law and the implementing regulations for discretionary detention. Accordingly, they have violated the Accardi doctrine. *See id.*

FOURTH CAUSE OF ACTION:
Petitioner's Detention Under 8 U.S.C. § 1225(b)(2) Is Ultra Vires

77. Petitioner repeats and re-alleges the allegations contained in all of the preceding paragraphs of this Petition.

78. Because Petitioner is not "seeking admission," he is not lawfully detained under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is *ultra vires* and not lawful.

79. Rather, the proper statutory interpretation of the INA, consistent with decades of practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a).

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]
3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner

[3] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York 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)); *Khalil v. Joyce*, No. 1:25-cv-1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9; *see also Ozturk v. Hyde*, No. 25-cv-374 at 68 (WKS) (D. Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

from custody, returning him to the status of liberty he enjoyed prior to the recent redetention, and that he not be re-detained without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a);

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen 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. ICE 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;
    c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond; and
    d. Enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2);
5. Award Petitioner his 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.

Dated: January 29, 2026
Brooklyn, New York

Respectfully Submitted,

/s/ Alexandra Lampert

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