

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANA VARUN

Petitioner

v.

(Emergency Application)

KENNETH GENALO, NYC Director,
Enforcement & Removal Operations,
U.S. Immigration and Customs Enforcement;

A No. 

TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, Attorney General of the United States,

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)
AND EMERGENCY MOTION FOR ORDER TO SHOW CAUSE
& TEMPORARY RESTRAINING ORDER**

1. RANA VARUN (“Petitioner”), by counsel, respectfully petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and moves for emergency relief by Order to Show Cause and Temporary Restraining Order.
2. This Petition is filed on an emergency basis to prevent Petitioner’s imminent unlawful transfer or removal. As of this moment, Petitioner has not had an opportunity to interview with counsel. Since Respondents have not yet provided Petitioner with access to any recent detention documents, nor the opportunity to review them with counsel, the factual allegations here are pleaded upon information and belief, except where otherwise indicated. Petitioner reserves the right to amend or supplement this Petition as more facts become available.
3. On January 20, 2026, ICE called Mr. RANA VARUN, an asylum seeker from India allowed

to be in the US, to an ICE check-in at 26 Federal Plaza and rewarded him for showing up by detaining, arresting, and incarcerating him indefinitely, without a hearing.

4. DHS says he's not entitled to a hearing and could be in jail for months or years until his case is resolved.
5. ICE arrested him without a warrant and is incarcerating him indefinitely without an individualized custody determination as required by the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and the governing detention statutes and regulations.
6. ICE arrested him without 1) a “reason to believe that he was removable” and that 2) he was “likely to escape before a warrant can be obtained,” which are the minimum requisites under INA Section 287 (a)(2), 8 USC 1357 (a)(2) for a warrantless arrest by ICE.
7. Petitioner, through this habeas, seeks immediate relief including
 - (i) an order prohibiting his transfer,
 - (ii) an order compelling Respondents to produce him before the Court,
 - (iii) an order compelling production of the DHS administrative record (A-file) and all arrest/custody documentation, and
 - (iv) an order requiring a lawful custody determination within 24–48 hours or, alternatively, Petitioner’s immediate release.

PRELIMINARY STATEMENT

8. This is an emergency habeas case about a basic constitutional and statutory boundary: the government detained and arrested RANA VARUN without presenting a valid arrest warrant or complying with statutory or constitutional safeguards.
9. The Department of Homeland Security (DHS) arrested him and is now detaining him indefinitely without a individualized custody determination required by the immigration detention laws.
10. Civil immigration detention is a profound deprivation of liberty, and due process demands

meaningful safeguards *at the moment* the Government chooses to restrain someone's freedom.

11. Courts in this District repeatedly grant habeas relief where ICE detains people without making the individualized assessment that § 1226(a) and the implementing regulations require, and where ICE attempts to justify detention after the fact rather than through contemporaneous process. See, e.g., *Lopez Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Ho, J.) (granting habeas relief; explaining that due process must constrain the Government's wide discretion to detain under § 1226(a)); *Barco Mercado v. Francis*, No. 1:25-cv-06582 (LAK), 2025 WL (S.D.N.Y. Nov. 26, 2025) (granting petition for writ of habeas corpus ordering immediate release.) (Judge Lewis A. Kaplan); *Kelly v. Almodovar*, No. 25 Civ. 6448, 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025) (Torres, J.) (ordering immediate release where ICE's process was defective and stressing that post-hoc "re-determination" is not a substitute for initial deliberative custody decision); *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (Daniels, J.) (granting habeas; ordering immediate release in a re-detention/no-process scenario); *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (Torres, J.) (granting habeas; ordering immediate release); *Gonzalez v. Joyce*, No. 25 Civ. 8250, 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (Torres, J.) (granting relief and ordering immediate release).
12. Petitioner therefore seeks immediate judicial intervention to prevent transfer, compel disclosure of vital documents, require production of the Petitioner before the Court, and enforce the statutory and constitutional requirement of a prompt, contemporaneous individualized custody determination by DHS or, in the absence of that, order his immediate release.

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody under the color of United States authority and challenges the legality of that custody as unconstitutional and in violation of statute and regulation

14. The venue is proper in the Southern District of New York because the Petitioner was seized in New York, was re-detained, and processed at ICE facilities within this District, and is currently being held at the Orange County Correctional Facility in Goshen, NY.

Respondents direct, control, and administer Petitioner's detention and transfer decisions in and from this District.

15. This Court has authority to issue a temporary restraining order and preliminary injunctive relief "as law and justice require," including to prevent transfer that would impair the Court's jurisdiction and ability to order effective habeas relief.

PARTIES

16. Petitioner RANA VARUN, is a 34-year-old resident of Ozone Park, Queens who is not a citizen of the United States.

17. He entered the US through the Texas border on or about October 2024, was detained in Houston, and was issued a Notice to Appear for removal on October 27, 2025, to 26th Federal Plaza in New York, NY.

18. ICE paroled him into the US, required him to post a bond, and ordered him to take part in the Alternative to Detention monitoring program, which he had been doing until he was arrested.

19. In New York, he has a fixed address of  as verified on his New York-issued driver's license.

20. Respondent Kenneth Genalo is the NYC Director of Enforcement & Removal Operations, ICE,

and is a legal custodian of Petitioner.

21. Respondent Todd Lyons is the Acting Director of ICE and is responsible for ICE detention policies and practices.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is responsible for DHS policies and enforcement practices affecting detention.

23. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity in connection with the federal custody at issue.

THE FACTS

24. Mr. Varun entered the US, was apprehended by DHS, paroled into the US, and released.

25. He was thereafter arrested by ICE agents at 26 Federal Plaza at an ICE check-in.

26. The officers did not present a warrant and did not advise the Petitioner of his rights.

27. ICE officers arrested him without notice, without issuing a formal Revocation of Parole, as required by statute, without a custody determination, without an evaluation of flight risk or dangerousness, without giving him an opportunity to be heard, all in violation of the INA and of his Fifth Amendment due process rights.

28. Petitioner had cooperated with the ICE-required supervision; nevertheless, he was taken into custody, transported to an ICE facility, and remains detained.

29. Petitioner has remained detained without any meaningful opportunity to request release, and without any contemporaneous individualized custody determination as required by the detention statutes and implementing regulations.

30. Petitioner's warrantless arrest and continued detention are arbitrary and unlawful, effected without due process of law and in violation of the Fourth and Fifth Amendments and the

immigration detention statutes and regulations.

ARGUMENT

PETITIONER’S WARRANTLESS ARREST AND DETENTION WITHOUT A
CONTEMPORANEOUS,
INDIVIDUALIZED CUSTODY DETERMINATION VIOLATES THE FOURTH AMENDMENT,
THE FIFTH AMENDMENT, AND THE IMMIGRATION DETENTION STATUTE IN THE INA

31. The Fifth Amendment’s Due Process Clause prohibits the Government from depriving any person of liberty without due process of law. Freedom from physical restraint lies at the very core of the liberty protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This protection extends to citizens and noncitizens alike, including individuals in immigration custody, regardless of their manner of entry or procedural posture. *Id.* As the Supreme Court has repeatedly emphasized, an essential principle of due process is that any deprivation of liberty must be preceded by notice and an opportunity to be heard, appropriate to the nature of the case. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Where detention flows from executive action unaccompanied by the ordinary safeguards of the criminal process, habeas courts are required to engage in *the most searching review of the legality of that detention*. *Boumediene v. Bush*, 553 U.S. 723, 783 (2008).
32. The Supreme Court has repeatedly emphasized that immigration detention, even when authorized by statute, remains subject to the Due Process Clause. In *Zadvydas v. Davis*, the Court held that civil immigration detention must bear a reasonable relation to its purported purpose and that statutes should not be construed to authorize indefinite detention absent clear congressional intent, precisely because such detention would raise serious constitutional concerns. 533 U.S. 678, 690–701 (2001). The Court reaffirmed that principle in *Demore v. Kim*, explaining that even mandatory detention provisions are constitutionally permissible only when they are limited in duration and accompanied by sufficient procedural safeguards. 538 U.S. 510, 528–31 (2003). Most recently, in *Jennings v. Rodriguez*, while rejecting a statutory

bond-hearing requirement as a matter of interpretation, the Court made explicit that constitutional challenges to detention under § 1225(b) remain fully cognizable in habeas and must be addressed on their merits. 583 U.S. 131, 147–49 (2018).

33. Whether the Government purports to detain Petitioner under INA § 1225(b) or § 1226, the constitutional inquiry remains the same. The Government may not impose civil detention without a legitimate governmental purpose and without procedures sufficient to mitigate the grave risk of erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690–91. Detention that is automatic, categorical, or justified solely by immigration status or manner of entry, without any individualized assessment or opportunity to be heard, offends due process. *Id.* Courts in this Circuit have consistently rejected the notion that Congress’s plenary power over immigration permits detention without meaningful process, even where the statute uses mandatory language. *Wang v. Ashcroft*, 320 F.3d 130, 139–40 (2d Cir. 2003).
34. The Government will likely assert that Petitioner’s detention arises under the Immigration and Nationality Act, specifically 8 U.S.C. § 1225. Section 1225(a) defines who is deemed an “applicant for admission,” a legal classification that attaches at the moment an individual is encountered by immigration officials and is alleged to be seeking entry into the United States. Section 1225(b) then prescribes certain procedures that follow an inspection determination, including detention during expedited removal proceedings under § 1225(b)(1) or pending completion of full removal proceedings under § 1225(b)(2). On its face, however, § 1225 is an inspection and processing statute. It governs how admissibility determinations are made; it does not operate as a freestanding grant of unreviewable detention authority divorced from constitutional limits.
35. Historically, § 1225 was enacted to regulate the inspection function at the border or its

functional equivalent. Detention under the immigration laws was understood as ancillary to removal proceedings and subject to parole, discretion, and judicial review. The modern practice of treating § 1225(b) as an automatic and self-executing detention mandate represents a sharp departure from that historical understanding. As the Supreme Court recognized in *Shaughnessy v. United States ex rel. Mezei*, even in the context of exclusion, detention authority has never been absolute and has always been subject to constitutional scrutiny where confinement becomes prolonged or arbitrary. 345 U.S. 206, 212–16 (1953).

36. Federal courts in this Circuit have consistently rejected the Government’s attempt to treat § 1225(b) as a categorical detention license. The Second Circuit has made clear that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (quoting *Zadvydas*). In *Velasco Lopez*, the court emphasized that civil detention without a meaningful opportunity to obtain release violates due process and that the Government bears the burden of justifying continued confinement. *Id.* at 852–54. Although *Velasco Lopez* arose under § 1226, its constitutional reasoning applies with equal force to detention under § 1225, because “the constitutional problem is the same: prolonged detention without adequate procedural protections.” *Id.* at 854.

37. Southern District of New York courts have applied these principles specifically in the § 1225 context, recognizing that the statute does not eliminate the requirement of a contemporaneous, individualized custody determination. In *Lopez-Benitez v. Garland*, the court held that detention violated due process where the Government could not explain when, how, or by whom the decision to detain was made, and where no individualized assessment preceded the deprivation of liberty. 2023 WL 4100426, at *7–9 (S.D.N.Y. June 21, 2023). The court

emphasized that pointing to later administrative proceedings could not cure the initial constitutional defect, because “due process requires notice and an opportunity to be heard at a meaningful time.” *Id.* at 8, (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

38. Likewise, in *Barco Mercado v. Frances*, the Southern District granted habeas relief where ICE detained the petitioner first and only later attempted to justify that detention through administrative process. The court found it dispositive that ICE “did not conduct a custody determination until after arresting Petitioner,” holding that post-hoc rationalizations could not substitute for constitutionally required procedures. 2020 WL 5211052, at 5–7 (S.D.N.Y. Sept. 1, 2020). The court ordered release, not remand, recognizing that the constitutional violation was ongoing and could not be remedied by further delay. *Id.* at 8.

39. Other SDNY decisions have echoed this reasoning, holding that detention under § 1225(b) without meaningful procedural protections creates an unacceptably high risk of an erroneous deprivation of liberty. In *Gonzalez v. Joyce*, the court explained that where procedural protections are “almost nonexistent,” the *Mathews* balancing *test* weighs decisively in favor of immediate judicial intervention. 2025 WL , at (S.D.N.Y. 2025). The court emphasized that exhaustion is not required where the injury is constitutional and cannot be adequately addressed by an immigration judge or the Board of Immigration Appeals. *Id.*; see also *Valdez v. Garland*, 2022 WL 4239575, at *4–6 (S.D.N.Y. Sept. 14, 2022) (excusing exhaustion where due-process violations were structural and ongoing).

40. In practice, then, the real source of the Government’s asserted detention power is not § 1225(a) or § 1225(b) as written, but an administrative assumption that classification as an applicant for admission automatically justifies incarceration. That assumption finds no support in the statutory text, in historical practice, or in binding constitutional precedent. Section 1225(b)

presupposes a lawful seizure and a valid custody determination; it does not dispense with them. Where detention is imposed without notice, without an opportunity to be heard, and without an individualized assessment of necessity, the Government is not exercising authority granted by Congress but acting ultra vires and in violation of due process.

41. Accordingly, while the Government may invoke § 1225(b) as the nominal basis for Petitioner’s detention, this Court must look to the substance of what occurred. Where, as here, the deprivation of liberty was imposed without constitutionally sufficient process and continues to this day, habeas relief lies in release. Ordering further administrative proceedings would merely prolong an unlawful confinement and fail to cure the constitutional injury. As courts in this District have repeatedly recognized, “[r]elease—not remand—is the appropriate remedy for unconstitutional immigration detention.” *Barco Mercado*, 2020 WL 5211052, at *8; see also *Velasco Lopez*, 978 F.3d at 855.

1. In other words, DHS cannot collapse the INA’s two detention tracks to transform an interior apprehension into a border-inspection detention regime. Judge Torres applied that same rule in *Gonzalez v. Joyce*, holding that the Petitioner was “not subject to mandatory detention as a noncitizen ‘seeking admission’ ... under 8 U.S.C. § 1225, but rather may be subject to detention only on a discretionary basis under § 1226,” expressly relying on *Samb v. Joyce*, 2025 WL 2398831, at 3 (S.D.N.Y. Aug. 19, 2025).

A. THE FOURTH AMENDMENT APPLIES TO INTERIOR CIVIL IMMIGRATION ARRESTS; WARRANTLESS ARREST AUTHORITY IS NARROW AND STATUTORILY CONSTRAINED

2. Civil immigration enforcement does not occur in a constitutional vacuum. Inside the United States, the Fourth Amendment governs seizures, and warrantless arrests must fall within narrow exceptions.

3. Congress likewise limited ICE's warrantless arrest authority in 8 U.S.C. § 1357(a)(2), which requires statutory prerequisites before an officer may arrest without a warrant.
4. ICE arrested him without 1) a "reason to believe that he was removable" and that 2) he was "likely to escape before a warrant can be obtained," which are the minimum requisites under INA Section 287 (a)(2), 8 USC 1357 (a)(2) for a warrantless arrest by ICE.
5. When ICE cannot prove those prerequisites, the seizure is invalid. Here, ICE officers did not present any warrant and did not articulate any lawful basis for arresting Petitioner. That is the hallmark of an unreasonable seizure, and it cannot serve as the foundation for lawful civil detention.

B. THE FIFTH AMENDMENT FORBIDS ARBITRARY CIVIL DETENTION: § 1226(A) REQUIRES ICE TO MAKE AN INDIVIDUALIZED CUSTODY DECISION BEFORE OR AT THE MOMENT LIBERTY IS TAKEN

6. The liberty interest in being free from government custody lies at the heart of due process. Where the Government has discretion to detain or release under § 1226(a), due process demands safeguards that ensure discretion is actually exercised and not replaced by automatic detention.
7. In *Lopez Benitez v. Francis*, Judge Ho explained that § 1226(a)'s breadth triggers due-process constraints precisely because the Government has wide discretion to decide who to detain. *Lopez Benitez*, 2025 WL 2371588, at *10
8. In *Kelly v. Almodovar*, Judge Torres emphasized that an immigration-judge bond proceeding is a custody "re-determination" and is not a substitute for ICE's obligation to make the initial custody decision through a deliberative process prior to or contemporaneous with the loss of liberty. *Kelly*, 2025 WL 2381591, at *3.
9. Judge Bulsara's decision in this circuit in *Gopie v. Lyons*, No. 25-cv-5229 (SJB) (E.D.N.Y. Nov. 14, 2025) synthesizes and applies this principle. *Gopie* grants habeas relief where ICE failed to make a

valid initial custody determination and tried to rely on post-hoc process. *Gopie* holds that due process required ICE to make a custody determination at or before arrest and that the Government's after-the-fact approach does not satisfy the statutory and constitutional requirements that constrain discretionary detention. There, the court granted the writ where ICE failed to make a lawful initial custody determination contemporaneous with arrest and attempted to justify detention after the fact.

Judges in This District Have Repeatedly Ordered Immediate Release in Habeas Cases Where ICE Detained Individuals Without Lawful Process or Employed Defective Custody Procedures

10. In 2025, SDNY courts repeatedly granted habeas relief and ordered immediate release when ICE detained people under discretionary detention authority but failed to provide lawful process or to demonstrate a valid, individualized custody decision.
11. In *Chipantiza-Sisalema v. Francis*, Judge Torres granted habeas and ordered immediate release. *Chipantiza-Sisalema*, 2025 WL 1927931.
12. In *Gonzalez v. Joyce*, Judge Torres granted the habeas and ordered release in a case involving arrests/detention under challenged practices and reiterated that detention cannot rest on post-hoc rationalizations where the statutory and due-process requirements of discretionary detention are not satisfied. *Gonzalez*, WL 2961626, 2026.
13. In *Tumba Huamani v. Francis*, Judge Liman granted habeas and ordered immediate release, applying the principle that where detention is unlawful, release is the appropriate remedy. *Tumba Huamani*, 2025 WL 3079014.
14. In *Huang v. Almodovar*, Judge Ho ordered release and addressed recurring defects in ICE detention practices in this line. *Huang*, 2025 WL 3295912.
15. These authorities support the same conclusion here: ICE's failure to provide a lawful basis for the initial seizure and to make any contemporaneous individualized custody determination makes the detention unlawful and warrants immediate habeas relief.

Immediate Release Is The Proper Remedy; A Belated Bond Hearing Does Not Cure The Constitutional And Statutory Violations

16. Respondents will likely argue that Petitioner can seek redress through an immigration-judge bond proceeding. The SDNY has repeatedly rejected that concept, finding that the problem is the absence of a valid initial custody determination and other defects at the time of detention. *Kelly* explains that bond is a redetermination mechanism and does not replace ICE's obligation to properly make the initial custody decision. *Kelly*, 2025 WL 2381591, at *3. *Gopie* likewise treats the initial-custody defect as dispositive and grants the writ.
17. Accordingly, Petitioner seeks effective relief now: release unless and until Respondents can demonstrate lawful arrest authority and a contemporaneous individualized custody determination supported by documentation.

The Court Should Order Immediate Production Of Petitioner And Immediate Production Of The DHS Administrative Record (A-File) And Arrest/Custody Materials

18. ICE agents will not give the Petitioner copies of any relevant detention documents that are required for him to prosecute this request for liberty. ICE's failure to produce basic custody documentation makes meaningful habeas review impossible. The Court should order immediate production of the Petitioner before this Court, and of the A-file and all materials bearing on arrest authority, custody determination, and transfer.

CLAIMS FOR RELIEF

CLAIM ONE

Unlawful Warrantless Seizure And Arrest In Violation Of The Fourth Amendment And 8 U.S.C. § 1357(A)(2)

19. As demonstrated above, the Fourth Amendment applies to civil immigration arrests in the interior of the United States. Warrantless civil immigration arrests are strictly limited, including

by 8 U.S.C. § 1357(a)(2), which permits warrantless arrest only when statutory prerequisites are satisfied, including probable cause and the likelihood of escape.

20. Here, ICE arrested Petitioner, presented no warrant, articulated no probable cause, and provided no lawful basis for seizure. Petitioner's arrest was therefore unreasonable under the Fourth Amendment and ultra vires as a matter of statutory authority.

21. Because Petitioner's initial seizure was unlawful, his resulting custody is unlawful, and habeas relief is warranted to end an ongoing, unconstitutional deprivation of liberty.

CLAIM TWO

Detention Without A Contemporaneous, Individualized Custody Determination Violates The Due Process Clause Of The Fifth Amendment And 8 U.S.C. § 1226(A) And Implementing Regulations

22. Section 1226(a) authorizes discretionary detention or release pending removal decisions. Because the Government possesses broad discretion to decide whether to detain, due process requires procedures that constrain arbitrary detention and ensure that discretion is actually exercised through an individualized assessment. See *Lopez Benitez v. Francis*, 2025 WL 2371588, at 10 (S.D.N.Y. Aug. 13, 2025) (Ho, J.) (explaining that due process must account for the Government's wide discretion to arrest and detain under §1226(a)).

23. The governing regulatory scheme requires a prompt custody determination following arrest. ICE must decide—based on individualized facts—whether detention is necessary and whether release conditions can reasonably assure appearance and safety.

24. Respondents cannot lawfully recharacterize Petitioner's interior as mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) governs mandatory detention of certain noncitizens "seeking admission"—i.e., the statutory framework for inspection and admission—

whereas § 1226(a) governs discretionary detention of noncitizens already present in the United States pending removal proceedings.

25. In *Lopez Benitez v. Francis*, Judge Ho explained that § 1225(b)(2)(A) “requires mandatory detention of certain noncitizens’ seeking admission’ to the country,” while § 1226(a) supplies “discretionary authority to detain other noncitizens who are ‘already in the country.’” 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025).

CLAIM THREE

Failure To Follow Mandatory Detention Regulations And Procedures Renders Custody Unlawful Under *Accardi*

26. Under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), when an agency fails to follow its own binding regulations intended to protect individual rights, its action is unlawful.

27. The immigration detention scheme contains mandatory procedural protections for arrest processing and custody determinations. Where ICE fails to comply with those procedures—especially in the immediate aftermath of a warrantless arrest—continued detention is unlawful and habeas relief is warranted.

28. SDNY courts have repeatedly granted habeas relief and ordered immediate release when DHS/ICE’s process is defective, and the Government cannot show lawful custody authority and meaningful process. See, e.g., *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (ordering immediate release); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release).

CLAIM FOUR

Immediate Release Is the Proper Habeas Remedy; a Belated Bond Hearing Cannot Cure an Already-Completed Constitutional and Statutory Violation

29. As Chief Justice Roberts wrote in *Munaf v. Geren*, 553 U.S. 674, 693 (2008), the typical

remedy for unlawful executive detention is for the federal judge to order release:

Habeas is at its core a remedy for unlawful executive detention. *Hamdi v. Rumsfeld*, 536 542 U.S. 507, 536 (2004) (plurality opinion). The typical remedy for such detention is, of course, release. See, e.g., *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody”). *Id* at 693.

30. This has been applied by the SDNY in the line of cases cited above. See also, *Tumba Huamani v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (granting habeas; ordering immediate release).
31. Petitioner therefore seeks immediate habeas relief that is effective now, including release absent proof of lawful arrest authority and a contemporaneous, individualized custody determination.

CLAIM FIVE

**Exhaustion Is Not Required—and Is Constitutionally Unavailable—Where
DHS Invokes Matter of Q. Li and 8 U.S.C. § 1225(b) to Foreclose Any
Bond Authority; In Such Cases, Immediate Release Is the Only
Meaningful Habeas Remedy**

32. Even where exhaustion of administrative remedies may sometimes be treated as a prudential consideration rather than a jurisdictional bar, it is not appropriate in this case. Petitioner does not merely challenge a discretionary custody determination or seek review of an immigration judge’s weighing of bond factors; rather, Petitioner challenges the legality of the seizure and detention itself and the Government’s statutory and constitutional authority to confine him at all. Where a petitioner raises such a challenge, exhaustion is routinely excused because administrative remedies are inadequate to prevent irreparable harm. See *McCarthy v. Madigan*; 503 U.S. 140, 146–49 (1992); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995). That principle applies with particular force where, as here, ICE has refused to provide contemporaneous custody documentation explaining

when, why, or under what statutory authority the decision to detain was made, rendering any administrative route incapable of curing the unlawful deprivation of liberty. Requiring exhaustion under these circumstances would only prolong unconstitutional confinement and heighten the risk of transfer to a distant facility, thereby defeating this Court's jurisdiction and severely impairing access to counsel. See *Valdez v. Decker*, 2019 WL 4110173, at *3–4 (S.D.N.Y. Aug. 29, 2019).

33. Exhaustion through a bond hearing would also be nonsensical because the Government's own legal position forecloses that remedy entirely. Respondents contend that, under the Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (B.I.A. 2025), Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) and therefore categorically ineligible for bond. Where the government insists that an immigration judge lacks jurisdiction to conduct a bond hearing at all, requiring a detainee to request such a hearing as a prerequisite to habeas relief is not exhaustion but futility. Federal courts in this district have repeatedly held that exhaustion of administrative remedies is not required where a petitioner challenges the statutory and constitutional authority for detention itself and where the Government's own legal theory renders administrative relief unavailable. See *Singh v. Barr*, 939 F.3d 457, 461–62 (2d Cir. 2019); *Hernandez v. Decker*, 2018 WL 3579108, at *6 (S.D.N.Y. July 25, 2018).
34. This principle has been applied with particular force in 2025 habeas cases in which the DHS relies on *Matter of Q. Li* to assert that a noncitizen is detained under § 1225(b) and therefore categorically barred from bond. Under binding Supreme Court precedent, immigration judges lack authority to conduct bond hearings for detainees held pursuant to § 1225(b). See *Jennings v. Rodriguez*, 583 U.S. 281, 296–97 (2018). Where DHS takes the

position that detention arises under § 1225(b), immigration judges are stripped of bond jurisdiction as a matter of law, and any requirement that a detainee exhaust administrative remedies becomes not merely futile but constitutionally incoherent. See *Diallo v. Garland*, 2025 WL ____ (S.D.N.Y. 2025).

35. Taken together, these decisions reflect a consistent 2025 rule in this district: where DHS invokes *Matter of Q. Li* and § 1225(b) to argue that an immigration judge lacks bond jurisdiction, *exhaustion of administrative remedies is excused because no administrative remedy exists*. In that posture, an order directing a bond hearing is not meaningful relief, because the agency asserts that the hearing cannot lawfully occur. *Habeas relief must be effective rather than illusory, and federal courts may not discharge their constitutional duty by issuing orders that the Government's own legal theory renders impossible to implement*. See *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Barco Mercado v. Frances*, 2025 WL ____ (S.D.N.Y. 2025).
36. Requiring exhaustion under these circumstances would invert the purpose of the exhaustion doctrine and violate due process by prolonging unlawful detention without affording any forum capable of reviewing the legality of that detention. The Supreme Court has cautioned that exhaustion may not be applied in a manner that transforms it into a mechanism for insulating unconstitutional conduct from judicial review. See *McCarthy*, 503 U.S. at 147. Many judges in this district have therefore held that exhaustion is futile, unnecessary, and constitutionally unavailable where detainees challenge detention that is ultra vires, mandatory only by agency fiat, and categorically insulated from immigration-court review. In such cases, the only remedy that meaningfully vindicates the Suspension Clause and the Due Process Clause is immediate release from custody. See *Zadvydas v.*

Davis, 533 U.S. 678, 690 (2001); *Gonzalez v. Joyce*, 2025 WL ____ (S.D.N.Y. 2025).

37. Petitioner seeks relief from this Court because any months-long appeal to the Board of Immigration Appeals would be futile. A request for a bond hearing is likewise futile. The agency's position is clear: both immigration judges and the Board are bound by *Matter of Q. Li* and related precedent, including *Yajure-Hurtado*, and the policy underlying that position was issued in coordination with the Department of Justice, which exercises supervisory authority over the immigration courts and the BIA, including the power of the Attorney General to modify or overrule Board decisions. *See 8 C.F.R. § 1003.1(h)*. It is therefore unsurprising that the Board has held that individuals like Petitioner are subject to mandatory detention under § 1225(b)(2)(A), rather than bond-eligible detention under § 1226(a), and that in identical habeas proceedings nationwide, EOIR and the Attorney General have consistently reaffirmed that position through briefing and oral argument.
38. Moreover, by the time the Board could issue a decision on any appeal—a process that typically takes at least six months and often closer to a year—the harm of Petitioner's unlawful detention would be impossible to remediate. *See Rodriguez v. Garland*, 779 F. Supp. 3d 1237, 1245 (D. Ariz. 2024). The downstream effects of continued detention, including separation from family, interruption of medical and mental health care, and destruction of community stability, cannot be undone once they occur.
39. Finally, exhaustion is independently excused because neither immigration judges nor the BIA possess authority to adjudicate constitutional claims. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *Singh v. U.S. Dep't of Homeland Sec.*, 526 F.3d 72, 81 (2d Cir. 2008). Here, Petitioner asserts not only that Respondents are unlawfully detaining him without bond under an inapplicable statute, but also that such detention violates the Due

Process Clause itself. If Respondents intended to lawfully detain Petitioner, they were required to do so pursuant to 8 U.S.C. § 1226(a) and its attendant regulations, which mandate notice, a custody determination, and an opportunity for release on bond. See 8 C.F.R. §§ 236.1(c), (d). Having failed to comply with those requirements, Respondents may not now invoke exhaustion doctrine to shield an unlawful detention from judicial review.

CLAIM SIX

Due Process Requires Immediate Production of the DHS Administrative Record, Including the A-File, Arrest Documentation, and Custody Records

40. Meaningful habeas review is impossible when the Government withholds the basic record of arrest and custody. Petitioner seeks prompt production of the DHS administrative record, including the A-file, Form I-200/I-286 (if any), any NTA (if any), any “Notice of Custody Determination,” any custody classification notes, any statements or reports by arresting officers, and any transfer orders.
41. Courts regularly compel production of materials necessary to test the legality of custody in expedited habeas proceedings, particularly where detention is ongoing and irreparable harm is accruing daily.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Issue an Order to Show Cause and Temporary Restraining Order prohibiting Respondents from transferring Petitioner into or out of this District and requiring Respondents to identify Petitioner’s precise location immediately;
- B. Grant the writ of habeas corpus and order Petitioner’s immediate release, or, at

minimum, order Respondents to conduct a lawful, contemporaneous custody determination within 24–48 hours supported by documentation showing lawful arrest authority and individualized deliberation, and order release if Respondents cannot make that showing;

C. Order Respondents to produce Petitioner forthwith and to produce the DHS administrative file (A-file) and all arrest/custody and transfer records immediately;

D. Grant such other relief as the Court deems just and proper.

Dated: January 28,
2026 New York,
New York

Respectfully submitted,

MUSA-OBREGON

LAW P.C.

By: /s/ S. Michael Musa-Obregon

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANA VARUN

(Emergency Application)

Petitioner

EMERGENCY MOTION FOR ORDER TO
SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER

KENNETH GENALO, NYC Director,
Enforcement & Removal Operations,
U.S. Immigration and Customs Enforcement;

TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, Attorney General of the United States,

Respondents.

EMERGENCY MOTION FOR ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING ORDER

Petitioner respectfully moves, on an emergency basis, for an Order to Show Cause and Temporary Restraining Order

- (1) prohibiting his transfer,
- (2) compelling Respondents to produce him before the Court,
- (3) compelling production of the A-file and arrest and custody documentation and
- (4) ordering Respondents to conduct a lawful custody determination within 24–48 hours or, alternatively, Petitioner’s immediate release.

STANDARD FOR EMERGENCY RELIEF

A temporary restraining order and preliminary injunction are warranted where Petitioner shows likelihood of success on the merits, irreparable harm, a balance of equities in his favor, and that relief serves the public interest.

IRREPARABLE HARM

Petitioner suffers irreparable harm each day he remains confined without lawful

authority and without the constitutionally required process. The Second Circuit recognizes that the loss of liberty constitutes irreparable injury as a matter of law. Petitioner also faces the immediate risk of transfer which would frustrate counsel's access and impair the Court's ability to grant effective habeas relief.

LIKELIHOOD OF SUCCESS

Petitioner is likely to succeed because the record currently reflects a warrantless arrest with no articulated basis and continued detention without any contemporaneous individualized custody determination. The SDNY has repeatedly granted habeas relief and ordered immediate release when ICE's detention process is defective, and the Government cannot show lawful individualized decision-making. See *Lopez Benitez*, 2025 WL 2371588; *Kelly*, 2025 WL 2381591; *Valdez*, 2025 WL 1707737; *Chipantiza-Sisalema*, 2025 WL 1927931; *Gonzalez*, 2025 WL 2961626; *Tumba Huamani*, 2025 WL 3079014; *Huang v. Almodovar*, No. 25 Civ. 9346, 2025 WL 3295912 (S.D.N.Y. Nov. 26, 2025).

BALANCE OF EQUITIES AND PUBLIC INTEREST

The equities overwhelmingly favor preventing unconstitutional detention. The public interest is not served by detaining individuals without lawful process and statutory compliance, and it is served by enforcing constitutional and statutory limits on civil immigration enforcement.

CONCLUSION

For the foregoing reasons, the Court should grant the emergency OSC/TRO and grant the writ, including ordering immediate release or, at minimum, compelling a lawful custody

determination within 24–48 hours supported by documentary proof and ordering release.

Dated: January 28, 2026
New York, New York.

Respectfully submitted,

MUSA-OBREGON LAW P.C.

/s/ S. Michael Musa-Obregon

S. Michael Musa-Obregon, Esq.
michael@musa-obregon.com

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

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have received this information from staff members at the law firm, the office file, investigations of counsel, and from the Petitioner, who has granted me permission to discuss the events described in this Petition with this family. On the basis of this understanding, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

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| Dated: January 30 , 2026 | BY: <u>/s/ S. Michael Musa-Obregon</u> S. Michael Musa-Obregon, Esq. michael@musa-obregon.com |
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CERTIFICATE OF SERVICE

I certify that on January 30, 2026, I caused the foregoing Petition, Emergency Motion, Memorandum of Law, and Proposed Order to be served by electronic mail and/or overnight service on the United States Attorney's Office for the Southern District of New York, Civil Division, and by electronic mail and/or overnight service on counsel for Respondents, and I further caused service on Respondents in their official capacities via the U.S. Attorney as permitted by applicable rules.

/s/ S. Michael Musa- Obregon
S. Michael Musa Obregon, Esq.

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