**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

A.H.,
*Petitioner*,

v.

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

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

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

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

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

Civil Action No. 26-869

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

1. Petitioner A.H. ("Petitioner" or "A.H.") petitions this Court for a writ of habeas corpus to remedy his unlawful arrest and detention by Respondents. A.H. is an asylum seeker from Belarus who came to the United States to find refuge for himself, his wife, and their daughters. He has done everything the U.S. government asked of him. He presented himself at the border to seek asylum, and DHS granted him and his family parole to come into the United States on or about December 6, 2021. A.H. then timely filed his application for

asylum, withholding of removal, and protection under the Convention Against Torture in immigration court. He attended numerous appointments with Immigration and Customs Enforcement ("ICE") and was even wearing an electronic GPS ankle monitor at the time of his detention.

2. On May 30, 2025, A.H. dutifully attended a routine master calendar hearing in immigration court at 26 Federal Plaza. After A.H. appeared in court pro se, ICE detained him in the hallway, without notice or opportunity to contest his detention, and transported him to immigration detention where he has remained for the past 8 months.

3. Nonetheless, A.H. prepared and won relief from removal while behind bars. On September 8, 2025, an immigration judge ("IJ") granted A.H.'s application for withholding of removal, finding that he cannot be removed to Belarus because the government tortured him in the past on account of his political opinion and likely would do the same in the future. DHS did not appeal.

4. In December 2025, A.H.'s removal defense counsel submitted a release request to ICE asserting that the IJ's decision to grant withholding of removal was final given the Government's failure to appeal and that agency policy mandates release in such circumstances. *See* Exh. A (citing "Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal" (Apr. 21, 2000)).

5. As the attached emails between A.H.'s removal defense counsel and ICE demonstrate, the agency has not meaningfully considered his request to be released. *See* Exh. B. While there is an appeal pending at the Board of Immigration Appeals ("BIA") in A.H.'s removal proceedings, it was initiated by A.H. and relates only to his application for asylum. The IJ denied his application for asylum as a matter of discretion based on A.H. facing open

criminal charges, which have all since been resolved. He carries one misdemeanor conviction. A.H. appealed the denial of asylum to the BIA and will urge the BIA to take another look at his asylum case in light of the resolution of his criminal cases. Although the IJ denied the more favorable relief of asylum, he found that A.H. met his burden of proof on withholding of removal. That grant of relief is not in dispute and is final. Even during an appeal, however, the agency's longstanding policy has been to release individuals granted fear-based relief. See Ex. A.

6. ICE has not provided any explanation for why they continue to detain A.H. following his grant of withholding of removal. See Exh. B (Emails). Similarly, they did not provide any notice or explanation for why they were revoking A.H.'s parole and detaining him in the first place. This was a violation of A.H.'s due process rights as well as statutory and regulatory law.

7. A.H. remains detained in ICE custody at the Orange County Correctional Facility (OCJ), and he is unable to avail himself of a bond hearing before the immigration court because DHS has recently changed decades of prior practice and begun misclassifying individuals arrested in the interior of the country as ineligible for bond under 8 U.S.C. § 1225(b). A.H.'s detention—now over 8 months—has furthermore become unreasonably prolonged.

8. Petitioner has no remedy at law other than a petition to this Court, requesting the Court to order Respondents to immediately release him from immigration custody. In the alternative, Petitioner requests an individualized bond hearing before this Court. In such a bond hearing, the government should bear the burden of proving by clear and convincing evidence that continued detention remains justified, and the Court should consider whether

alternatives to detention and A.H.'s s ability to pay bond would mitigate any concerns as to flight risk or danger.

## PARTIES

9. Petitioner is a 44-year-old asylum seeker from Belarus who was paroled into the United States in 2021. He timely filed his application for asylum, withholding of removal and protection under the Convention Against Torture. Respondents detained him after he dutifully attended a routine hearing in immigration court in May 2025. He has been detained by Respondents at the Orange County Correctional Facility in Goshen, New York for 8 months. In September 2025, an immigration judge granted A.H.'s application for withholding of removal based on the likelihood of political persecution he faces in his home country. While the grant of withholding of removal is final, A.H. appealed the IJ's denial of asylum to the BIA, where it remains pending.

10. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York, and acts as the Warden for the Orange County Correctional Facility, where Petitioner is detained. As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Road, Goshen, NY 10924.

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

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

13. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of New York, she supervises Respondent Francis, and she is legally responsible for Petitioner's detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem's office is located at the U.S. Department of Homeland Security, Washington, District of Columbia 20528.

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

## JURISDICTION

15. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. CONST. amend. V; and the Suspension Clause, U.S. CONST. art. I, § 9.

16. This Court has jurisdiction in equity to order Petitioner's immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release." (citation omitted)).

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

## VENUE

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

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

**EXHAUSTION**

20. Administrative exhaustion is not statutorily required in immigration detention cases. *See Beharry v. Ashcroft*, 329 F.3d 51, 56 (2d Cir.2003); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234-35 (S.D.N.Y. 2010). No exhaustion requirement applies to the claims raised in this petition because the immigration court and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute). Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538-39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010).

21. Here, A.H. requested release pursuant to ICE's own policy favoring release where withholding of removal has been granted *See* Exh. A (Release request). Acting Assistant Field Office Director Joseph Pujol cursorily denied release. *See* Exh. B (Emails). First, he erroneously stated that ICE filed the appeal. *See id.* When A.H.'s counsel made clear that DHS did not appeal the grant of withholding of removal and the only appeal pending is the one A.H. brought himself as to the singular issue of asylum, Officer Pujol responded only: "Apologies, you are correct. He will remain detained pending the outcome of the BIA

appeal." *See* Exh. B (Emails). Therefore, no further exhaustion is required as it would be futile. *See, e.g.*, *Araujo-Cortes*, 35 F. Supp. 3d at 538-39.

## FACTUAL AND LEGAL BACKGROUND

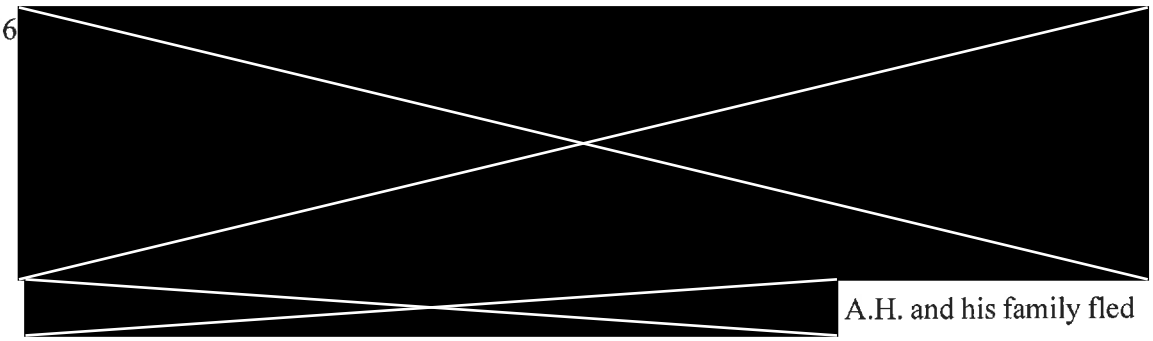
**Specific Facts About Petitioner**

22. A.H. was born on [redacted] in Minsk, Belarus. When he was about 13 years old, he witnessed Belarus's very first election since the fall of the Soviet Union. In 1994, Aleksandr Lukashenko became the president of Belarus. [redacted]

23. A.H. completed high school and graduated from university with a degree in economics and social management in Belarus. After graduation, he worked in accounting in both the private and public sectors. It was difficult for A.H. to make a living, however, because Lukashenko's regime does not allow most companies to trade internationally.

24. [redacted]

25. In 2019, A.H. married his wife and in June 2020, their daughter was born. A few months later, Belarus held its August 2020 presidential election. [redacted]

26  A.H. and his family fled Belarus in November 2021.

27. A.H. and his family were paroled into the United States at the San Ysidro Port of Entry on or about December 6, 2021. They subsequently moved to Brooklyn, New York and timely Form I-589 applications seeking asylum.

28. On May 30, 2025, A.H. appeared at the immigration court at 26 Federal Plaza for a master calendar hearing. He was detained by ICE and taken to the Orange County Jail.

29. On June 25, 2025, A.H. retained Brooklyn Defender Services to represent him in his removal proceedings.

30. On September 8, 2025, the Immigration Judge granted A.H.'s application for withholding of removal and denied his application for asylum. See Ex. D (grant of withholding of removal).

31. On October 8, 2025, A.H. appealed only the denial of asylum. The Department of Homeland Security did not appeal the grant of withholding of removal.

32. As of the date of this filing on February 2, 2026, the Board of Immigration Appeals has not provided a transcript of the merits hearing or a briefing schedule in his appeal. He has been detained for over eight months.

**Legal Background**

*Removal Proceedings and Detention Authority*

33. When a noncitizen arrives at the United States border, DHS officers inspect them as applicants for admission to the United States according to processes laid out in 8 U.S.C. § 1225. Immigration officers assess admissibility and may find an applicant inadmissible if they do not have proper entry documents or if they seek entry through fraud or misrepresentation. *See* 8 U.S.C. § 1225(a)(3), (b)(1); *Jennings v. Rodriguez*, 538 U.S. 281, 287 (2018). Upon finding an applicant inadmissible, DHS can place them in removal proceedings under 8 U.S.C. § 1225(b) or 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 custody for the pendency of removal proceedings or release them into the United States on parole with orders of supervision.

34. The statute provides DHS 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).

35. 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.*

36. 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).

37. In all other circumstances, written notice is required. *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.*

Section 1229a Proceedings

38. Noncitizens seeking asylum are entitled to a full hearing in immigration court before an IJ in full removal proceedings. Section 1229a sets out the procedures and rights afforded to noncitizens, including: "the privilege of being represented. . . by counsel of the [noncitizen's] choosing who is authorized to practice in such proceedings," 8 U.S.C.§ 1229a(4)(A), and "a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(4)(B). Removal proceedings under 8 U.S.C. § 1229a require that an IJ "conduct proceedings for deciding the inadmissibility or deportability of [a noncitizen]" charged with "any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title." These removal proceedings commence when DHS files the Form I-862, Notice to Appear ("NTA") with an immigration court charging a noncitizen with one or more of the grounds of removability. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021) (describing removal proceedings).

39. Decisions made by IJs may be appealed to the BIA. 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the federal court of appeals for the judicial circuit in which the 1229a proceedings terminate. 8 U.S.C. § 1252.

*Detention*

40. Throughout removal proceedings, a noncitizen may be detained. Congress has authorized civil detention of noncitizens in removal proceedings only for specific, non-punitive purposes. *See Jennings*, 538 U.S. at 281-84; *Demore*, 538 U.S. at 531; *Zadvydas*, 533 U.S. at 690. Immigration detention falls into two categories: (1) discretionary detention, meaning the IJ can hold a bond hearing pursuant to statute, *see* 8 U.S.C. § 1226(a); and (2) mandatory detention, meaning the IJ cannot hold a bond hearing pursuant to statute, *see* 8 U.S.C. §§ 1225(b), 1226(c), 1231.

41. The discretionary custody provision, Section 1226(a), is the default provision for individuals in removal proceedings. It states in relevant part that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The regulations implementing that provision delineate factors that must be considered upon the detention of a noncitizen, namely whether they are a "danger to property or persons" and whether they are "likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If DHS determines that the noncitizen is subject to detention, the noncitizen may then request that determination be reviewed by an IJ in a bond hearing. 8 C.F.R. §§ 1003.19(d), (e). Thus, the discretionary authority in § 1226(a) requires that ICE make an individualized custody determination before a noncitizen may be taken into custody. *See 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").

*ICE Campaign to Re-Detain Law-Abiding Noncitizens*

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

43. 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."); *see also* Arya Sundaram, *US judge releases Bronx man detained by ICE, citing due process violations*, GOTHAMIST (May 9, 2025), https://gothamist.com/news/us-judge-releases-bronx-man-detained-by-ice-citing-due-process-violations [hereinafter Sundaram] ("Ceesay is also among a growing group of immigrants who, since Trump returned to the White House, are being detained during routine ICE check-ins . . . .").

44. Part of the concerted effort to arrest and detain thousands more noncitizens per day involved lifting restrictions on officers regarding the locations and circumstances in which they could make arrests. On January 20, 2025, ICE rescinded a 2021 Memo that severely limited the circumstances in which ICE could arrest noncitizens at or near courthouses and gave officers the green light to actively target noncitizens attending required hearings and appointments. *See* U.S. Dep't of Homeland Sec., Immigr. & Customs Enf't, "Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses") (Jan. 20, 2025) (hereinafter "January 2025 Memo"). The memo advised "ICE officers or agents [to] conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted [noncitizen(s)] is or will be present at a specific location, and where such action is not precluded by laws and imposed by the jurisdiction in which the enforcement action will take place." *Id.*

45. DHS later amended the January 2025 Memo on May 27, 2025 through a memo with the same subject line, "Civil Immigration Enforcement Actions in or Near Courthouses." See U.S. Dep't of Homeland Sec., U.S. Immigr. & Customs Enf't, "Civil Immigration Enforcement Actions in or Near Courthouses" (May 27, 2025) (hereinafter "May 2025

Memo"). The May 2025 Memo is substantially the same as the January 2025 Memo but it removes the part of the aforementioned sentence from the January 2025 Memo that limited immigration arrests "where such action is not precluded by laws and imposed by the jurisdiction in which the enforcement action will take place." *Compare* January 20, 2025 Memo at 2, *with* May 2025 Memo at 2. The evolution of these memos illustrate ICE's intent to arrest as many noncitizens as possible without regard for the due process requirements in making those arrests. A.H. was arrested just three days after the updated May 2025 Memo, on May 30, 2025.

46. Officers have been arresting large swaths of noncitizens without regard for the individual circumstances. *See* Julia Ainsley, et al., *Under Trump administration, ICE scraps paperwork officers once had to do before immigration arrests*, NBC News (Sept. 9, 2025) https://www.nbcnews.com/politics/national-security/trump-administration-ice-scraps-paperwork-officers-immigration-arrests-rcna229407 ("For more than 15 years, before they conducted any operation to arrest an immigrant in the United States, officers with [ICE's] Enforcement and Removal Operations division have been required to fill out a form with details about their target – name, appearance, known address and employment, immigration history, any criminal history and more – and give it to a supervisor for approval. This year, in a sign of how the agency has moved from targeted enforcement to broad street sweeps under the Trump administration, that policy has been ended, six current and former officials and agents of ICE and [DHS] told NBC News."). In fact, many noncitizens arrested by ICE included individuals whom ICE had previously granted parole or released from detention based on a finding that they were *not* dangerous or a flight risk. *See* Sundaram ("He was later detained by ICE in 2010 and released on an order of

supervision, a document allowing him to live in the United States as long as he appeared at routine check-ins. ICE agents arrested Ceesay during a check-in around Feb. 19."); *see also* Jasmine Garsd, *Lawyers warn clients of increased arrest risk at immigration check ins*, NPR (April 24, 2025) https://www.npr.org/2025/04/24/nx-s1-5372694/immigration-lawyers-warn-detention-risk ("[M]ultiple immigration lawyers told NPR they're seeing more cases like Josue Aguilar's: clients showing up to what they believe are routine immigration appointments, and getting detained.").

47. Professor Paul Gowder, who teaches constitutional law and immigration law at Northwestern Pritzker School of Law has stated of ICE's latest efforts, "The Trump administration has been going in and initiating changes to a lot of the policies that are predicates for people getting work authorization. They've been going in and trying to revoke authorizations, revoke parole, revoke temporary protected status. There's still disagreement about whether many of these changes they are trying to implement are legal, and so a lot of people can kind of be in a sort of limbo." *See* Tara Molina, *Expert says Trump administration changes to immigration policy leaving many once safe from deportation in limbo*, CBS NEWS (Oct. 17, 2025), https://www.cbsnews.com/chicago/news/expert-says-trump-administration-changes-to-immigration-policy-leaving-many-once-safe-from-deportation-in-limbo/.

48. ICE also attempted to summarily revoke humanitarian parole to thousands of individuals who entered the United States through the CBP One app. In April 2025, it was reported that ICE sent out mass termination messages through the app, which was rebranded under the name CBP Home. *See* Joel Rose & Sergio Martínez-Beltrán, *Migrants who entered the*

*U.S. via CBP One app should leave 'immediately,' DHS says*, NPR (Apr. 8, 2025), https://www.npr.org/2025/04/08/g-s1-58984/cbp-one-app-migrants-dhs-border.

The Burden of Proof in Immigration Court Bond Hearings

49. 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).

50. 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 A.H., who are subject to § 1226(a). *See In Re Guerra*, 24 I. & N. Dec. 37 (BIA 2006).

51. 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).

52. 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).

## LEGAL ARGUMENT

53. ICE failed to conduct a proper individualized review of the need for A.H.'s redetention, or provide any notice or opportunity to contest his detention prior to his arrest, in violation of both its own regulations and due process. Instead, he was swept up in ICE's nationwide campaign to increase arrests and detention, including with arrests while individuals were duly attending immigration court hearings to seek asylum through lawful means. Regardless of the current statutory basis for his detention, Respondents have further violated his due process rights by detaining him beyond 8 months without any opportunity to seek release at a bond hearing.

### I. Respondents violated A.H.'s due process rights by revoking his parole and redetaining him without notice, explanation, or an opportunity to be heard.

54. Despite granting A.H. parole into the United States, Respondents redetained him without any written notice or inquiry into whether his individual circumstances justified revocation, in violation of 8 C.F.R. § 212.5.

55. 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. *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)).

56. District Courts have found that "both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole must attend to the reasons an individual [noncitizen] received parole." *Mata Velasquez*, No. 25-CV-493-LJV, 2025 WL 1953796 at *10 (W.D.N.Y. July 16, 2025) (quotation marks omitted); *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.").

57. There is historical precedent for this. In 1958, the Second Circuit held that the parole of Hungarian refugees could not be revoked "without a hearing at which the basis for the discretionary ruling of revocation may be contested on merits." *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610, 612 (2d Cir. 1958); *see also Mata Velasquez*, 2025 WL 1953796, at *16 (explaining that "the petitioner and his family had been 'invited here pursuant to the announce[d] foreign policy of the United States'" (quoting *Paktorovics*, 260 F.2d at 613-14)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (ordering release for a noncitizen who was paroled into the United States and redetained without individualized assessment).

58. Other courts in this circuit have also ordered release where ICE has revoked humanitarian parole without process. *See 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).

## II. Alternatively, A.H.'s ongoing detention absent a bond hearing violates due process.

59. Civil immigration detention violates due process except in "certain special and 'narrow' nonpunitive circumstances'" where the government has a "special justification" that outweighs the individual's core liberty interest in freedom from detention. *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972). ("Due process requires that the nature and duration of [civil] commitment bear some reasonable relation to the purpose for which the individual is committed."). Noncitizens in removal proceedings may only be detained to ensure their appearance at future hearings and prevent danger to the public. *See Demore*, 538 U.S. at 523-33 (Kennedy, J., concurring); *Zadvydas*, 533 U.S. at 690-91; *see, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil

commitment for any purposes constitutes a significant deprivation of liberty that requires due process protection." (citations omitted)). Here, A.H. has been detained for over eight months without any determination as to his risk of flight or dangerousness.

60. A.H. can only be detained under Section 1226(a), given DHS's grant of parole and time residing within the United States before his redetention. *See Munoz Materano v. Arteta,* 2025 WL 2630826 at *1. The agency's misclassification that he is detained under Section 1225, and thus is not eligible for a bond hearing, violates his statutory and due process rights. A.H. is not presently "seeking admission," as required by the text of Section 1225(b)(2). The vast majority of judges across the country have held that the administration's recent policy shift, classifying any individual detained in the interior of the United States as "seeking admission" and thus subject to mandatory detention without bond, violates the statute. *See, e.g. Barco Mercado v. Francis*, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025.

61. Regardless of the statutory basis for A.H.'s detention, it has become unreasonably prolonged in violation of the Due Process clause of the Fifth Amendment. A.H. has been detained in DHS custody for over eight months. This period is unquestionably prolonged given that there is no evidence that A.H. presents a flight risk or a danger to the public, and that he has been granted withholding of removal without an appeal of that decision by the Government.

62. The Second Circuit applies the *Mathews* test to evaluate as-applied challenges to prolonged immigration detention without bond. *See Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024) (applying *Mathews* for mandatory detention under 8 U.S.C. § 1226(c)); *Velasco Lopez v.*

*Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying *Mathews* for prolonged detention under 8 U.S.C. § 1226(a), the discretionary statute).

63. Under *Mathews,* "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation marks omitted). In determining "what process is due," the court considers (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." *Id.* at 335.

64. Application of these factors to A.H.'s case mandates release or alternatively, a bond hearing before a neutral arbiter where the government bears the burden of proof. *See Hasan Ahmed Taleb Al-Thuraya v. Warden, Orange Cnty. Corr. Facility et al.*, Respondents., No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (applying *Mathews* factors to order a burden-shifted bond hearing for a noncitizen detained under Section 1225(b)).

Factor 1: A.H.'s Private Interest

65. A.H.'s ongoing detention in a correctional facility has substantially deprived him of his private interests, of which his liberty interest is the most salient. *See J.C.G. v. Genalo*, No. 24-cv-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025) (finding that a petitioner's confinement in a correctional facility without a criminal adjudication constituted a "substantial deprivation of liberty"). He has already spent over eight months confined in a jail setting analogous to criminal incarceration. A.H. could remain detained for many more months if not years while the BIA reviews his appeal of the IJ's order

denying asylum and while he potentially pursues any future petitions for review to the Second Circuit.

Factor 2: The Risk of Erroneous Deprivation and the Value of Additional Safeguards

66. A.H.'s continued confinement presents a high risk of an erroneous deprivation of his interests. The Second Circuit in *Black v. Decker* recognized that detention absent a bond hearing under § 1226(c) "markedly increased the risk of erroneous deprivation of Petitioners' private liberty interests" because there are "almost nonexistent procedural protections in place." 103 F.4th at 152; *see also Hasan Ahmed Taleb Al-Thuraya, v. Orange Cnty. Corr. Facility et al.*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (applying the *Black* framework in the context of 1225 mandatory detention).

67. A.H.'s present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest. In December 2021, DHS made the reasoned decision to parole A.H. into the United States while he pursued his asylum claim. As part of that determination, DHS found that A.H. did not pose a danger or a flight risk. A.H. complied with all of ICE's instructions to attend check-in appointments and immigration court hearings. Nevertheless, he was arrested in May 2025; he was not accorded any process prior to the sudden revocation of his parole and redetention.

68. Moreover, his prolonged detention without the opportunity to seek a bond amounts to an erroneous deprivation of his liberty interest.

Factor 3: The Government's Interest

69. Third, as in *Black*, the competing government interest in preventing A.H. from being released is minimal. DHS's basis for subjecting him to mandatory detention—i.e. his classification as an "arriving alien" who was paroled into the United States after applying

for admission via the CBP One application—is not an indicator of flight risk or dangerousness, given that he was paroled with authorization from DHS, he was complying with all of ICE's monitoring requirements, and his strong claim for fear-based relief. The government's interest in preventing dangerous absconders from leaving detention is therefore not furthered by A.H.'s exclusion from bond.

70. To the extent the government argues that it has an interest in detaining "arriving aliens" so as to control admission into the United States, *see, e.g.*, *Clerveaux*, 397 F.Supp.3d at 310-11, that interest is inapposite here, as Mr. A.H. was paroled into the United States and living a law-abiding life in New York with his family before he was arrested without justification or reason at his check-in appointment.

71. A bond hearing with the burden on DHS would allow a neutral arbiter to consider the individualized factors of A.H.'s fitness for release, which would support the government's interest in preventing dangerous absconders from release into the community. The government's interest would not be eroded if A.H. received a bond hearing. In light of these specific circumstances, A.H.'s continued detention by Respondents merits at least an inquiry into whether they are detaining him for an improper purpose. Respondents violated due process by failing to provide A.H. with necessary procedural protections while committing a significant deprivation of liberty.

72. The *Mathews* test applies and should be found to merit a bond hearing even if Petitioner is found to be currently detained under 8 U.S.C. 1225. *See Hasan Ahmed Taleb Al-Thuraya,* 2025 WL 2858422, at *5 (applying *Mathews* factors to order a burden-shifted bond hearing for noncitizen detained under Section 1225(b)). In addition, numerous other district courts within the Second Circuit have held that DHS's prolonged detention of arriving noncitizens

under that statute, without access to a bond hearing, violated their due process rights and required a bond hearing. *See Kouadio v. Decker*, 352 F.Supp.3d 235, 241 (S.D.N.Y. 2018) (finding prolonged detention of an arriving noncitizen was unconstitutional and noting: "Petitioner enjoys the right of appeal, and his right to asylum and admission into the United States remains open. His right to liberty is as valuable to him as it is to any U.S. citizen, and he has a constitutional right to a bail hearing that should no longer be denied to him."); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018) (finding 9 months of ongoing indefinite detention of an arriving noncitizen unreasonable in violation of due process).

73. Regardless of whether the Court finds that Petitioner is detained under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225, this Court should apply the *Mathews* factors as indicated above. *See, e.g.*, *Black*, 103 F.4th at 148-50 (detention pursuant to 8 U.S.C. § 1226(c)); *Velasco Lopez*, 978 F.2d at 851 (detention pursuant to 8 U.S.C. § 1226(a)); *Cabrera Galdamez v. Mayorkas*, 2023 WL 1777310, at *4 (S.D.N.Y. Feb. 6, 2023) (applying *Mathews* factors to detention pursuant to 8 U.S.C. § 1231(a)(6)).

## III. ICE's Continued Detention of Petitioner Without Review of His Custody Pursuant to ICE Policy Violates the APA and Due Process.

74. Consistent with this statutory and regulatory scheme, long-standing ICE policy favors the prompt release of noncitizens who have been granted relief from removal. A 2004 ICE memorandum stated that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." *See* Exh. A (Release Request), Tab B (ICE Memoranda).

75. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2004 ICE memorandum is "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period." *Id.* at Tab C. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released. . . " *Id.* (emphasis added). Director Johnson clarified that "in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community." *Id.*

76. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").According to the *Accardi* doctrine, "government agencies are generally required to follow their own regulations." *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020). "The *Accardi* doctrine applies with particular force when 'the rights of individuals are affected.'" *Calderon v. Sessions*, 330 F. Supp. 3d 944, 957 (S.D.N.Y. 2018) (holding that DHS violated the *Accardi* doctrine, the Administrative Procedure Act, and

petitioner's due process rights by executing petitioner's order of removal with no explanation or justification notwithstanding their right to apply for a provisional waiver) (quoting *Morton v. Ruiz*, 415 U.S. 199, 232 (1974)). This includes adherence to an agency's informal rules and policies. *See Morton*, 415 U.S. at 232.

77. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished manual or policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of internal agency manual).

78. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"), or as a due process violation, *see Sameena, Inc. v. United States Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

79. Prejudice is generally presumed when an agency violates its own policy. *See Montilla,* 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief.

All that needs be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them.").

80. To remedy an *Accardi* violation, a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

81. ICE's long-standing policy (hereinafter "the Policy") is to release non-citizens immediately following a grant of a fear-based claim, absent exceptional circumstances. *See* Ex. A at 1 ("In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns . . ."); *id.* at 3 ("Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . .") (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See id.* at 2 ("[T]he Field Office Director must approve any decision to keep a[] [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody."). The Policy is precisely the type of rule ICE is obligated to follow under *Accardi.*

82. ICE's failure to release Petitioner under the Policy is prejudicial. Prejudice can be presumed because the Policy implicates Petitioner's fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation

serves a purpose to benefit the [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted). The Policy provides Petitioner with a discrete opportunity to win his freedom from detention and that opportunity has thus far been withheld from him. *See Zadvydas*, 533 U.S. at 690 ("Freedom 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.")

83. As a remedy, this Court should review Petitioner's custody under the Policy's "exceptional circumstances" standard and order his release accordingly. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.").

## CLAIMS FOR RELIEF

### FIRST CLAUSE OF ACTION:

### Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process) – Parole Revocation

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

85. 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. Flores*, 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 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

86. 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).

87. Here, the government made the reasoned decision to grant A.H. humanitarian parole. However, on May 30, 2025, ICE abruptly detained him without notice or opportunity to respond.

88. The Due Process Clause entitles A.H. to meaningful process assessing whether his detention is justified. Respondents sudden arrest and detention of A.H. while he was attending immigration court, without an opportunity for him to contest his detention in front of a neutral adjudicator after he had been living and working in the United States for years does not provide sufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See, e.g.*, *Munoz Materano,* 2025 WL 2630826 at *1; *Chipantiza-Sisalema*, 2025 WL 1927931 at *5 (ordering release of petitioner redetained after immigration hearing, finding that her detention "violates her Fifth Amendment right to due process because ICE Detained her without notice, an opportunity to respond, or an individualized determination that she poses a flight risk or a danger to the community"); *Valdez v. Joyce*, No. 25 CIV. 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 CIV. 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*, 2025 WL 1918679, at *20 (E.D. Cal. July 11, 2025) (ordering release of individual 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").

**SECOND CAUSE OF ACTION:**

**Violation of the Due Process Clause of the Fifth Amendment (Substantive Due Process)**

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

90. 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.

91. 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*, 441 U.S. at 535.

92. A.H. is not a flight risk nor is he a danger to the community. Respondents' detention of A.H. 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 (Parole Revocation)**

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

94. 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).

95. 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 Sates ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954).

96. Respondents have violated the statutory law and implementing regulations for the revocation of humanitarian parole. Accordingly, they have violated the *Accardi* doctrine. *See id.*

**FOURTH CAUSE OF ACTION:**

**Violateion of Due Process Clause of the Fifth Amendment to the U.S. Constitoution (Procedural Due Process) – Detention Without Bond**

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

98. Petitioner's incarceration without a bond hearing, particularly his prolonged incarceration without a bond hearing which has lasted eight months and will likely extend much longer, violates the Due Process Clause.

99. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of continued detention and require immediate release or in the alternative, a constitutionally adequate bond hearing.

**FIFTH CAUSE OF ACTION:**

**Release Pending Adjudication; 28 U.S.C. § 2241**

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

101. "[F]ederal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas cases." *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001).

102. In assessing whether to release a petitioner during the pendency of their habeas petition, courts consider whether the petition raises "substantial claims" and whether "extraordinary circumstances exist" that make the "grant of bail necessary to make the [habeas] remedy effective." *Id.* at 230.

103. A.H. has raised substantial claims, namely that his due process rights were violated when ICE revoked his parole and detained him without notice, explanation, or an opportunity to be heard. *See Salgado v. Francis*, No. 25-CV-6524 (VEC), 2025 WL 2806757 at *4 (S.D.N.Y. Oct. 1, 2025) (finding substantial claim where petitioner "asserts that detention violated her rights to substantive due process because she does not present a danger to the community or a flight risk, and to procedural de process because she was detained without notice, explanation, or an opportunity to be heard").

104. Extraordinary circumstances are present in this case given the punitive nature of Petitioner's ongoing detention, the IJ's granting of relief from removal, and the deterioration of Petitioner's mental health. *See* Exh D; *Salgado*, 2025 WL 2806757 at *4 ("When it is reasonable to conclude that detention would worsen a petitioner's health, extraordinary circumstances are present.").

105. Finally, these circumstances—which include, ICE's unlawful revocation of parole and detention of A.H. without any notice, A.H.'s deteriorating mental health as a result, and the length of his detention without a bond hearing—make release necessary for the habeas remedy to be effective. *See Salgado*, 2025 WL 2806757 at *4 (finding health issues, prolonged detention absent a bond hearing, and lack of an individualized assessment of dangerousness and flight risk when detained render release necessary to make habeas remedy effective).

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case, , pursuant to the All Writs Act;[1]

(3) Issue a Writ of Habeas Corpus ordering Respondents to release A.H. immediately onto the same terms that existed prior to his sudden redetention, and that he not be redetained without notice and an opportunity to be heard at a predeprivation hearing, at which the government will have the burden of showing that detention is required under Section 1226(a); or

(4) In the alternative, order a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's

[1] *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)

continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

(4) 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, or other statute; and

(5) Grant any other and such further relief as the Court deems just and proper.

Dated: February 2, 2026
Brooklyn, New York

Respectfully Submitted,

*/s/ Alexandra Lampert*

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