

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

L.S.M.

Petitioner,

v.

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

Respondents.

Civil Action No. 26-942

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

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

PRELIMINARY STATEMENT

1. L.S.M.¹ is 29 years old and has never been convicted, arrested, or charged with a crime. On November 10, 2025, unidentified men—later identified as federal agents—racially profiled him, then subjected him to shocking and unprovoked brutality in the course of detaining him. L.S.M.’s detention was unlawful, because the agents failed to provide an individualized review prior to that detention as required by 8 U.S.C. 1226(a).

2. L.S.M. has now been detained at Orange County Correctional Facility (“Orange County Jail” or “OCJ”) for nearly **90 days**. He sustained injuries from ICE’s unreasonable and violent arrest, during which he was repeatedly tased by an officer. And to this day, L.S.M. has been denied a fair bond hearing with sufficient procedural protections.

3. L.S.M.’s continued indefinite detention is an unconstitutional deprivation of his Fifth Amendment rights under the Due Process Clause and a breach of the Immigration and Nationality Act (“INA”) and related regulations of the Department of Homeland Security (“DHS”). He must be released immediately, or in the alternative, be given an immediate and fair bond hearing before this Court, during which the Respondents will have the burden to justify L.S.M.’s detention.

¹ A motion to proceed via pseudonym will be filed concurrently with the Petition.

PARTIES

4. Petitioner L.S.M. is a 29 year-old man who has been detained by Respondents in Orange County Correctional Facility in Goshen, New York, since November 2025. His removal proceedings are pending at the Varick Immigration Court in New York City, New York.

5. Respondent KENNETH GENALO is named in his official capacity as the Field Office Director for ICE's New York Field Office. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders and is the legal custodian of Petitioner.

6. Respondent PAUL ARTETA is named in his official capacity as the Sheriff of Orange County and the Warden of the Orange County Jail. As such, he is the custodian of Petitioner.

7. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ, including the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Petitioner.

8. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of New York, she supervises Respondent Genalo, and

she is legally responsible for Petitioner's detention and removal. As such, she is a legal custodian of Petitioner.

9. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises Respondent Genalo, and he is legally responsible for Petitioner's detention and removal.

JURISDICTION AND VENUE

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

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

12. Venue is proper in this district under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. L.S.M. is detained at OCJ, within this district; the ICE office that controls the location of his detention is based in New York City; L.S.M.'s immigration proceedings are proceeding here; and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

13. L.S.M. is not required to exhaust administrative remedies because doing so is futile and would not provide adequate relief. Rather, seeking administrative relief from an agency that has expressly stated a policy not to provide such relief would prolong his illegal detention.

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

15. On September 5, 2025, the Board of Immigration Appeals (“BIA”) decided *Matter of Yajure Hurtado*, a precedential decision holding that all noncitizens who, like L.S.M., allegedly have not been admitted to the United States are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). Thus, the BIA will be bound to affirm an Immigration Judge’s (“IJ”) decision that L.S.M. is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny him release. This is true even though the vast majority of district courts in the country that have heard a challenge to the BIA’s reading of the statute have rejected it out of hand. The BIA’s enforcement of *Yajure Hurtado* means that L.S.M.’s case satisfies the first and third exceptions to exhaustion, as there are no genuine administrative remedies available that could provide him with the relief he seeks. This is in fact a quintessential case of futility. Because binding BIA precedent mandates that L.S.M. be detained, even if DHS

cannot prove that he is a flight risk or a danger, L.S.M. can turn only to this Court to challenge his detention.

16. On November 20, 2025, Judge Sykes in the Central District of California held that a nationwide bond-eligible class of immigrants who were denied bond hearings under DHS's recent policy after entering without inspection are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *See Maldonado Bautista v. Santacruz*, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). Judge Sykes later certified the class of these individuals—the “Bond Eligible Class”—and extended her declaratory judgment to all members of the Class nationwide. *See Maldonado Bautista v. Santacruz*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025); *see also id.* (certifying class defined as: “Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination”).

17. L.S.M. is a member of the Bond Eligible Class, as he is alleged to have “illegally entered the US,” allegedly does not have lawful status in the United States and is currently detained at the OCJ. *See* Ex. A (Nov. 10, 2025, Form I-213) (“I-213”) at 2. As a member of the Bond Eligible Class, L.S.M. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 as a matter of law. L.S.M. is therefore entitled to “consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing [*i.e.*, bond hearing] before an immigration judge.” *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), ECF No. 94 (Final Judgment) at 2. As of January 14, 2026, immigration judges

have refused to recognize the Bond Eligible Class, further demonstrating that additional administrative efforts would be futile. *See* Ex. B (Jan. 13, 2026, ICE Guidance to IJs).

18. In addition, L.S.M. satisfies the fourth exception to prudential exhaustion because he has raised a substantial constitutional question that ICE’s unlawful detention without first making an individualized determination violates his rights under the Due Process Clause, and that a bond hearing before an immigration judge will not cure the unlawful detention. As explained below, while a noncitizen detained under § 1226(a) is entitled to a bond hearing, “[s]uch hearings . . . are provided for the purpose of custody *re*-determination—a hearing held by an [IJ] after ICE makes its initial decision to detain.” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497 (S.D.N.Y. Aug. 13, 2025) (emphasis in original) (quoting *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025)); *see also* 8 C.F.R. 236.1(d)(1). But for L.S.M., there was no “initial decision,” as ICE’s detention did not comport with the regulations implementing § 1226(a). Neither an IJ nor the BIA is positioned to properly adjudicate such a claim. *See Lopez Benitez*, 795 F. Supp. 3d at 497 (holding the substantial constitutional question cannot be properly adjudicated administratively because “Mr. Lopez Benitez does not argue that he merely needs an opportunity to contest his detention, but that his detention under § 1226(a) without first receiving an individualized assessment is a violation of his due process rights”); *see also J.U. v. Maldonado*, 2025 WL 2772765, at *4 (E.D.N.Y. Sept. 29, 2025) (concluding that “Petitioner is excused from exhausting administrative remedies before seeking relief in this Court” for the same reasons).

19. Thus, to the extent the Respondents suggest that any constitutional violation can be cured with a “custody re-determination hearing before an immigration judge,” judges within this district have repeatedly held that such a post-deprivation hearing is an “inadequate substitute” for

ICE's duty to "engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Cuy Comes v. DeLeon*, 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (granting habeas petition and ordering immediate release of detainee) (citations omitted); *see Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (a bond "hearing is no substitute for the requirement that ICE" must follow prior to the initial decision to "strip a person of the freedom that lies at the heart of the Due Process Clause"); *Rocano Buestan v. McShane*, 2025 WL 3496361, at *6 (S.D.N.Y. Dec. 5, 2025) ("A bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. . . . To dispose of the matter as law and justice require, 28 U.S.C. § 2243, necessitates [petitioner's] release from detention." (cleaned up)).

20. Further, exhaustion is futile because even if L.S.M. is given a bond hearing, the BIA would force L.S.M. to bear the burden of proof in his bond hearing. *See Matter of R A V P*, 27 I&N Dec. 803, 804 (BIA 2020). Due process however requires the burden of proof to be placed on the government when detaining noncitizens who are neither dangerous nor a flight risk. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

STATEMENT OF FACTS AND PROCEDURAL HISTORY²

21. L.S.M. is a 29-year-old victim of an unwarranted, brutal, and racially motivated ICE arrest, which resulted in serious injury. ICE continues to detain L.S.M. in OCJ, without cause.

² The facts summarized in this Petition are set forth in the Declaration of L.S.M., as submitted in connection with his pending *Motion to Suppress and Terminate [Removal] Proceedings* initiated against him by DHS before the immigration court. *See generally* Ex. C (L.S.M. Decl.).

ICE's Initial Stop of L.S.M.

22. On November 10, 2025, at or around 4:00 p.m., L.S.M. had just finished dropping off his 2-year-old U.S. Citizen daughter at his sister-in-law's house before starting his workday. *See* Ex. C (L.S.M. Decl.) ¶¶ 2-3. He was walking down the street when he was grabbed and stopped in Corona, Queens, by three large men. *Id.* ¶¶ 4-5. These men were later determined to be federal agents.

23. The men were dressed in civilian clothing, but for black vests with letters on them. *Id.* ¶ 4. These officers did not identify themselves as Special Agents from the Homeland Security Investigations ("HSI"), the Federal Bureau of Investigation ("FBI"), and Drug Enforcement Administration ("DEA") as alleged on the Form I-213. Ex. A (I-213) at 4. These men were armed and one man was wearing a mask. Ex. C (L.S.M. Decl.) ¶ 4.

24. One of the agents grabbed L.S.M. by his right shoulder, while one agent stood in front of him, and the other to his left, "blocking [his] path." *Id.* ¶ 5. The agents did not ask him his name, where he was from, or ask about any criminal history. *Id.* ¶ 6.

25. The agents stated that they were looking for someone whom they did not name and showed L.S.M. three photos of three different men who "looked Latino" on a phone and asked if he recognized any of the men. *Id.* L.S.M. stated he did not. *Id.* This should have concluded the interaction; instead, one of the officers proceeded to take a photo of L.S.M. *Id.*

26. One of the officers then asked L.S.M. for ID and his immigration papers. *Id.* L.S.M. responded that he did not have either because he did not have his wallet with him. *Id.* L.S.M., who has no criminal record and has been regularly "watching the news" realized that he was about to be arrested by immigration officers and that he could not "leave or walk away." Ex. A (I-213) at 3 (showing negative finding of any criminal record); Ex. C (L.S.M. Decl.) ¶ 6.

L.S.M. observed that the officers “had weapons and were much taller and bigger than [him].” Ex. C (L.S.M. Decl.) ¶ 6.

ICE’s Unwarranted, Racially Motivated Assault.

27. Without any explanation, L.S.M., a slight man of 5-feet and 120 pounds, was thrown against a wall, searched for weapons and, when handcuffs were put on him, L.S.M.’s hand was severely cut, resulting in him recoiling in pain and bleeding significantly. *Id.* ¶ 7.

28. L.S.M. was then punched repeatedly by a masked officer and thrown to the ground where the officer continued to beat him. *Id.* ¶ 8. He asked the officers, “[W]hy are you hitting me,” but “they didn’t say anything and kept doing it.” *Id.* L.S.M. recalls seeing an officer with a gun and fearing for his life. *Id.* It was then when he was already pinned to the ground that he was tased three times on the back. *Id.* ¶ 9.

29. After tasing and arresting L.S.M., the officers placed him “in an unmarked car where one other Latino person was arrested and inside in the car.” *Id.* ¶ 10.

30. Despite bleeding and having just been hit and tased, L.S.M. was never offered any medical assistance or asked if he was okay. *Id.*

31. L.S.M. was then taken to 26 Federal Plaza where he was questioned by immigration officials and was detained in harsh conditions for approximately five days. Ex. A (I-213) at 1 (stating his height and weight); Ex. C (L.S.M. Decl.) ¶¶ 11, 14 (stating he was not given food until his second day, was unable to bathe, and unable to sleep due to lights and overcrowding).

32. An ICE agent involved in L.S.M.’s stop and detention is named Brendan Cuni, and has gained notoriety for his violent and aggressive nature with people he arrests, as well as bystanders. *See* Ex. A (I-213) at 2 (listing Cuni as one of the arresting agents). Cuni has been

seen shoving female protesters on multiple occasions.³ People have also taken to social media to warn others in New York of his whereabouts and participation in mass arrests. From the videos captured on social media, it is clear that this ICE agent and others have an “arrest first, ask questions later” approach. In one video, Cuni is seen standing by while fellow agents arrest a man who is clearly shouting “I was born here!”⁴ It was not until after they seemingly reviewed his identification that they unpinned him from up against a wall.⁵

33. ICE agents, and specifically Cuni, have established this pattern of violently stopping alleged immigrants to carry out a quota-driven mass deportation scheme. As a result, Cuni’s image has been circulated as a warning on social media in an attempt to protect others from his brutal and senseless tactics.

ICE’s Medical Neglect of L.S.M. in Detention

34. ICE does not deny that they tackled and tased L.S.M; they admit that they “utilized a physical takedown, closed hand techniques, and deployed an agency issued Taser.” *See* Ex. A (I-213) at 3.

35. Despite the fact that the officers “never offered any medical help” to L.S.M., the Form I-213 falsely states that L.S.M. “refused medical treatment.” Ex. C (L.S.M. Decl.) ¶ 10; Ex. A (I-213) at 3.

³ See Videos Show New Yorkers Clashing with Federal Agents Over ICE Raid, CBS NEWS (Oct. 22, 2025) (<https://www.youtube.com/watch?v=mal4YSFXvCA>).

⁴ *See, e.g.*, Video posted by Veronica De La Cruz (@veronicadelacruz), *ICE Detains US Citizen*, INSTAGRAM (Oct. 23, 2025) (<https://www.instagram.com/reels/DQKGPRvDRrL>) (showing Cuni on his phone in the foreground as a Black male U.S. citizen is arrested by other ICE agents. U.S. citizen yells that he was born at Kings County Hospital in Brooklyn); *see also* Video posted by cultura_inmigrante (@cultura_inmigrante), TIKTOK (Oct. 23, 2025) (https://www.tiktok.com/@cultura_inmigrante/video/7564556449364397367) (same).

⁵ *Id.*

36. L.S.M. was tased about three times, sustained injuries on his face, hands, and back, and was left with a scar from his arrest. Ex. C (L.S.M. Decl.) ¶¶ 7, 11. Aside from his hand being bandaged, L.S.M. was not offered “any other medical help” at Federal Plaza. *Id.*

37. L.S.M. spent five days detained in a room with about “15-20 other Hispanic men” at Federal Plaza, and had to sleep on the floor. *Id.* ¶ 14. The lights were always on, making it “impossible to sleep in the already crowded and loud room.” *Id.*

38. L.S.M. was not given any food until his second day in Federal Plaza, at which point he was only given “one sandwich a day.” *Id.* He was also unable to bathe himself during his time detained there. *Id.* These deplorable conditions have been the subject of litigation and a court order. *See Mercado v. Noem*, 800 F. Supp. 3d 526 (S.D.N.Y. 2025), Preliminary Injunction (ordering ICE at 26 Federal Plaza to clean holding rooms three times per day, furnish adequate soap, toothbrushes, toothpaste).

39. L.S.M. was eventually transferred to Orange County Jail, where he has been detained for over two months. Ex. C (L.S.M. Decl.) ¶ 15; *see* Ex. P (ICE Detainee Locator on Feb. 3, 2026, showing L.S.M.’s detention at Orange County Jail). He still “do[es] not understand why [he] was arrested in the first place.” Ex. C (L.S.M. Decl.) ¶ 15.

Procedural History

40. On or around November 10, 2025, DHS served a Notice to Appear (“NTA”) on L.S.M., initiating removal proceedings and calendaring him for a master calendar hearing before the Immigration Court on November 18, 2025. Ex. D (NTA).

41. On November 18, 2025, DHS proffered evidence consisting solely of a Form I-213, which has factual inconsistencies and significant errors, that was created following L.S.M.’s unlawful stop and seizure. Ex. A (I-213). The Form I-213 alleges that L.S.M. “assaulted officers and agents[] multiple times.” *Id.* at 2.

42. On December 30, 2025, L.S.M. filed a motion to suppress the alleged evidence and terminate removal proceedings initiated against him in violation of his Fourth and Fifth Amendment rights. Ex. E (Dec. 30, 2025, Mot. to Suppress Evid. and Terminate Proceedings, excerpting attachments).

43. On January 12, 2026, DHS filed an opposition to L.S.M.'s motion to suppress the alleged evidence and terminate removal proceedings. Ex. F (Jan. 12, 2026 DHS Brief in Opposition to Respondent's Motion to Suppress Evidence and Terminate Proceedings). DHS attached a copy of an administrative arrest warrant, "Form I-200," that was issued after L.S.M.'s arrest. *Id.* at 10 (claiming that "[o]nce DHS officers obtained probable cause, through respondent's admissions, a warrant was issued"); Ex. G (Warrant). The warrant, which was provided for the first time as evidence in support of its opposition brief, states that L.S.M. is "removable from the United States... based upon: biometric confirmation of the subject's identity and a records check of federal databases," and "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." Ex. G (Warrant).

44. On January 22, 2026, L.S.M. filed a reply to DHS's opposition brief, demanded a suppression hearing, and highlighted the contradictions between DHS's opposition brief, which "solely relies on the alleged warrant and existence of I-200 led to [L.S.M.'s] arrest," and the form I-213, which "clearly states that [L.S.M.] was arrested and 'taken into custody' pursuant to a 'physical takedown, closed hand techniques,' and the use of a taser." Ex. H (Jan. 22, 2026, Respondent's Reply to DHS Brief in Opposition to Respondent's Motion to Suppress Evidence and Terminate Proceedings) at 6.

45. On January 26, 2026, Immigration Judge Dara Faith Reid at Varick Street Immigration Court in Manhattan subsequently scheduled the suppression hearing for February 10, 2026. Ex. I (Jan. 26, 2026, Order).

Current Climate of Detainments in ICE's Race-Driven Arrest Campaign

46. L.S.M.'s traumatic experience is just one of many aggressive and harmful recent ICE arrests and detentions. In 2025, ICE had its deadliest year since 2004, with over thirty individuals dying in custody as a result of injuries sustained during arrest, underlying conditions exacerbated by confinement, or being deprived of necessary medical care.⁶

47. Not only was 2025 the deadliest in over two decades, but December 2025 alone was the "deadliest month in ICE custody – six people died."⁷ December 2025 was also a record number of people detained as the agency was "holding 68,440 people in detention in mid-December; nearly 75% of them [having] no criminal convictions."⁸

48. Several of these deaths resulted from heart failure, strokes, other illnesses and suicide.⁹ Family members and lawyers, however, have alleged a cause of these deaths to be medical neglect of those that tried to receive medical care and failed.¹⁰

49. With the massive crowds in these ICE detention centers, the conditions of these confinements have deteriorated.¹¹ There are reports of unsanitary conditions, poor food supplies,

⁶ See Ex. J (Maanvi Singh, Coral Murphy Marcos, and Charlotte Simmonds, *2025 Was ICE's Deadliest Year in Two Decades. Here Are the 31 People Who Died in Custody*, THE GUARDIAN (Jan. 4, 2026)).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

and insufficient medical care, which DHS refuses to acknowledge.¹² Its spokesperson even claims the “average rate of death remained low.”¹³

50. With overcrowded detention centers, and unsanitary living conditions, the risk of communicable disease is high, and with nonresidents being frequently transferred to different jurisdictions, their medical history, records and medication can be lost, resulting in further problems.¹⁴ Additionally, this increase of detainees with a decrease in staff is worsening confinement conditions and poses a great risk of mental anguish and suicide.¹⁵

51. This severe increase in detainments is a direct result of a racially charged campaign affecting primarily Hispanic communities, as a greater scheme to satisfy an arrest quota implemented by ICE. The government’s mass deportation plan resulted in ICE implementing a “daily quota of 1,200 to 1,500 arrests” of noncitizens.¹⁶

52. The ruse that the ICE agents used against L.S.M. is a common one: investigators have reported that ICE agents are luring individuals into stopping by claiming to be looking for another individual and showing the detainee a photo.¹⁷ *The City* reports that ICE agents “often are showing a photo and that’s how they’re getting people to stop and engage with them. . . . They’re just claiming to be looking for a person to get people to stop and engage with them and we absolutely think that its race-based.”¹⁸ The ICE agents have also admitted that they

¹² *Id.*

¹³ *Id.*

¹⁴ See Ex. K (Alice Miranda Ollstein and Ruth Reader, *Ice is Hiring Dozens of Health Workers as Lawsuits, Deaths in Custody Mount*, POLITICO (Oct. 20, 2025).

¹⁵ *Id.*

¹⁶ See Ex. L (Nick Miroff & Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up arrests*, WASHINGTON POST (Jan. 26, 2025); see also Ex. M (Ted Hesson & Kristina Cooke, *ICE's Tactics Draw Criticism As it Triples Daily Arrest Targets*, REUTERS (June 10, 2025).

¹⁷ Ex. N (Gwynne Hogan, *Sidewalk Arrests Seize New Yorkers in ICE's Latest Surge*, THE CITY (Nov. 26, 2025 at 3:23 PM).

¹⁸ *Id.*

used biometric confirmation, likely through a facial recognition app called “Mobile Fortify,” during their initial stop of L.S.M., an unreliable tool that ICE has been known to use to manufacture probable cause for arrests. *See* Ex. G (Warrant).¹⁹

LEGAL BACKGROUND

Immigration Detention Framework and Bond Hearing Eligibility

53. There are two mutually exclusive statutes of the INA that govern the detention of alleged noncitizens with pending removal proceedings that are relevant here: 8 U.S.C. §§ 1225 and 1226. *See J.U.*, 2025 WL 2772765, at *4.

54. The first statute—specifically, 8 U.S.C. § 1225(b)(2)—applies only at the border. Under this statute, “applicants for admission” who are “seeking admission” into the United States are placed into expedited removal proceedings and subject to detention without a bond hearing.²⁰ *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to “borders and ports of entry”). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *Id.* at 288.

55. The second statute—8 U.S.C. § 1226(a)—applies inside the United States. Under this statute, individuals who are arrested and already inside the United States are generally placed into removal proceedings, during which an IJ (and later, potentially, the BIA and a U.S. Court of Appeals) will decide whether the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, or adjustment of status. This process can take months or even

¹⁹ *See* Ex. O (Joseph Cox, *ICE is Using a New Facial Recognition App to Identify People, Leaked Emails Show*, 404 Media (Jun. 26, 2025)).

²⁰ Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-cv-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

years. The detention of individuals arrested inside the United States and placed in removal proceedings is subject to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people “inside the United States” and “present in the country”). Most of these individuals are eligible for release on bond under § 1226(a), and they are consequently entitled to a custody redetermination (colloquially called a “bond hearing”) before an IJ to decide whether they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

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

57. Section 1226 was amended earlier this year by the Laken Riley Act (“LRA”). Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). Congress passed the LRA to expand mandatory detention under § 1226(c). *See id.* The LRA amendments require detention of noncitizens who have been charged as inadmissible under §§ 1182(a)(6)(A) (the inadmissibility ground for a noncitizen “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation), *and* who have also been arrested for, charged with, or convicted of certain crimes—expressly contemplating the inclusion of people who entered without inspection within the scope of § 1226 detention. *Id.*; *see Romero v. Hyde*, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025);

Sampiao v. Hyde, 2025 WL 2607924, at *22 (D. Mass. Sept. 9, 2025). The LRA amendments are not applicable here because L.S.M. has never been arrested for, charged with, or convicted of any crime.

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

The Burden of Proof in Immigration Court Bond Hearings

59. Unlike individuals detained at the border under § 1225, individuals who are detained within the United States under 8 U.S.C. § 1226(a) are not subject to mandatory detention and thus may be detained or released, pursuant to ICE discretion. 8 C.F.R. § 236.1(d)(1). If detained, the noncitizen may then request review of ICE's detention determination at a bond hearing. *Id.*

60. 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 L.S.M. who are subject to § 1226(a). *See In Re Guerra*, 24 I. & N. Dec. 37 (BIA 2006). 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). 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).

ARGUMENT

I. ICE Detained L.S.M. pursuant to its Discretionary Authority Under Section 1226(a).

61. ICE’s actions in violently detaining L.S.M. on November 10, 2025 could only have been pursuant to its discretionary authority under 8 U.S.C. § 1226(a). Individuals detained within the United States under 8 U.S.C. § 1226(a) are not subject to mandatory detention and thus are detained pursuant to ICE discretion. *See* 8 C.F.R. § 236.1(d)(1); *Jennings*, 583 U.S. at 288 (observing that § 1226(a) governs the removal of noncitizens “once [they are] inside the United States”).

62. The majority of judges in this district who have considered this question have held that “[Section] 1225(b)(2)(A) does not apply to [a petitioner] who has been continuously present in the United States[.]” *Cuy Comes*, 2025 WL 3206491, at *2 (citations omitted); *Lopez Benitez*, 2025 WL 2371588, at *3 (holding that § 1225(b)(2) does not apply to noncitizen who “has been

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

63. L.S.M. was detained in the United States on November 10, 2025. Ex. C (L.S.M. Decl.). Respondents have not presented any records showing that L.S.M. was detained pursuant to § 1225. In fact, the ICE arrest record and its alleged “evidence” for L.S.M. are devoid of any reference to § 1225. *See* Ex. D (Nov. 10, 205, Notice to Appear); Ex. F (DHS’s opposition to L.S.M.’s motion to suppress evidence and terminate proceedings); and Ex. G (Nov 10, 2025, Form I-200). Rather, ICE’s own records allege that L.S.M. has been present in the United States since “2021.” Ex. A (Nov. 18, 2025, I-213). And that he was arrested pursuant to an administrative warrant. Ex. G (Form I-200), which is only required for detention under § 1226(a). Under these circumstances, L.S.M. may only be subject to detention as a matter of discretion under § 1226(a).

64. To the extent Respondents seek to justify L.S.M.’s detention under 8 U.S.C. § 1225(b)(2)(A) by interpreting the statute as the BIA has done in *Yajure Hurtado*, 29 I. & N. Dec. 216—*i.e.*, classifying all noncitizens who allegedly entered the United States without admission or parole as “seeking admission” and subject to mandatory detention under § 1225(b)(2)—judges in this district, and the vast majority of federal district court judges hearing

this issue, have rejected such an assertion. For instance, in *Cuy Comes*, Judge Analisa Torres explained that such a “reading of § 1225(b)(2)(A)’s mandatory detention provision to apply to all inadmissible noncitizens present in the United States would render its text, which applies on its face only to certain noncitizens ‘seeking admission,’ useless surplusage.” 2025 WL 3206491, at *2; *see also J.U.*, 2025 WL 2772765, at *7 (“Respondent’s novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with Supreme Court’s prior statutory interpretations.”).

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

II. ICE Violated L.S.M.’s Due Process Rights by Failing to Give an Individualized Review as to His Detention, Necessitating Immediate Release.

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

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

68. *First*, as to the private interest, L.S.M.’s detention invokes “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851. “[ICE] is obligated to comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process.” *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (citation omitted). Under § 1226(a), ICE must make an individualized determination as to whether a noncitizen “pose[s] a danger to property or persons,” or is unlikely “to appear for any future proceeding.” 8 C.F.R. §§ 1236.1(c)(8), 236.1(c)(8); *see also Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination.”). “If, after such an individualized consideration, ICE chooses to detain the noncitizen pursuant to § 1226(a) pending removal proceedings, then the individual may ask for a bond redetermination hearing before the immigration judge.” *Cuy Comes*, 2025 WL 3206491, at *4 (citing 8 C.F.R. § 1003.19).

69. Here, Respondents cannot dispute that there was no such individualized determination about L.S.M.’s dangerousness or flight risk. As in *Cuy Comes*, the record shows that L.S.M. was “immediately detained after being stopped by immigration agents,” and he was arrested under ICE’s recent “operation of indiscriminate stops of Hispanic people” throughout New York City, “without an individualized assessment as to whether detention was warranted for each potential detainee.” *Id.* *5; Ex. C (L.S.M. Decl.) ¶¶ 7–8 (describing that ICE agents without explanation threw L.S.M. against the wall, severely cut his hand while cuffing him, and repeatedly beat and tased him while he was cuffed and laying on the ground.).

70. In addition, as in *Chipantiza-Sisalema*, Respondents also cannot argue that the ICE agents gave L.S.M. either notice or an opportunity to be heard on his detention prior to being detained, since they immediately detained L.S.M. while allegedly looking for another man that they did not name and who was unknown to L.S.M. *See* 2025 WL 1927931, at *3; Ex. C (L.S.M. Decl.) ¶¶ 5–6. Neither can Respondents argue that anyone made any determination that L.S.M. poses a risk of flight or a danger to the community before detaining him. *See* Ex. C (L.S.M. Decl.) ¶¶ 5–8. Respondent’s arrest record relies on highly inconsistent evidence and an administrative warrant which was issued after L.S.M.’s arrest. *See* Ex. F (Jan. 12, 2026 DHS Brief in Opposition to Respondent’s Motion to Suppress Evidence and Terminate Proceedings).

71. *Second*, the risk of erroneous deprivation of liberty is significant here. “The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty.” *Cuy Comes*, 2025 WL 3206491, at *5. L.S.M. was completely cooperative with the ICE agents, answering questions and obeying their orders and searches, and has never been accused or convicted of a

crime. *See* Ex. C (L.S.M. Decl.) ¶¶ 3–7. There is “no evidence in the record suggesting that [L.S.M.] is a flight risk or a danger to his community.” *Lopez Benitez*, 2025 WL 2371588, at *12.

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

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

74. As judges within this district have held in multiple recent cases, the deprivation of L.S.M.’s Due Process rights here requires that he be immediately released from ICE’s detention. In *Cuy Comes*, faced with a similar circumstance of an ICE arrest and detention without any individualized determination of flight risk or dangerousness, a judge in this district held that an after-the-fact “custody re-determination hearing before an [IJ]” is an inadequate remedy for ICE’s wrongful detention. 2025 WL 3206491, at *6. There, the Court ordered that the petitioner be released immediately from ICE custody. *Id.*

75. Similarly, the Court ordered petitioner's immediate release in *Lopez Benitez v. Francis*, where the petitioner was wrongfully subjected to mandatory detention under § 1225(b)(2) but was properly subject to § 1226(a). 2025 WL 2371588, at *10–12, 14. The Court in that case held that the government's assertion that the petitioner's detention was mandatory was “precisely the opposite of an exercise of discretion, which entails some sort of judgment.” *Id.* The Court ordered the same immediate release from ICE custody for multiple detention cases in 2025. *See, e.g., Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (ordering release where the government did not properly exercise its discretion under § 1226(a)); *Hyppolite*, 2025 WL 2829511, at *12, 17 (same); *Kelly v. Almodovar*, 2025 WL 2381591, at *3–4 (S.D.N.Y. Aug. 15, 2025) (same); *Gonzalez v. Joyce*, 2025 WL 2961626, at *3, 5 (S.D.N.Y. Oct. 19, 2025) (same). Accordingly, this Court should similarly order that L.S.M. be released immediately from ICE's custody and that he not be re-detained without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

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

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

77. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. CONST. amend. V.; *see generally Reno v. F*, 507 U.S. 292 (1993); *Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510. Due process

protects “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

78. 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).

79. The Due Process Clause entitles Petitioner to meaningful process assessing whether his detention is justified. Respondents’ sudden arrest and detention of L.S.M. without an opportunity for him to contest his detention in front of a neutral adjudicator does not provide sufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See, e.g., McShane*, 2025 WL 3496361, at *6 (ordering immediate release of petitioner who was detained by “ICE agents searching for somebody else” who “detained him in violation of his Fifth Amendment rights”); *Cuy Comes*, 2025 WL 3206491, at *6 (ordering immediate release of petitioner who was detained by immigration agents and arrested without cause on way home from work); *Alejandro v. Olson*, 2025 WL 2896348, at *9 (S.D. Ind. Oct. 11, 2025) (“Given that Respondents do not assert any other [statutory] basis for [petitioner’s] detention and do not argue that he presents a flight risk or danger, the appropriate remedy is his immediate release.”); *Lepe v. Andrews*, 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) (same).

**SECOND CAUSE OF ACTION:
ICE’S Failure to Exercise Its Discretion Violates Due Process and the INA; U.S. CONST.
amend. V.; 8 U.S.C. § 1226(a)**

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

81. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether to detain him.

But since ICE declared itself unable to release Petitioner under 8 U.S.C. § 1225(b)(2), the agency necessarily found itself unable to exercise its discretion.

82. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due under the discretionary detention statute, violating both the statute itself and the Due Process Clause of the Constitution.

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

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

84. 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.

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

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

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

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

88. 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 rightin excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

89. When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954).

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

**FIFTH CAUSE OF ACTION:
Violation Of Due Process Clause of the Fifth Amendment to the U.S. Constitution
(Procedural Due Process) -- Detention without Bond**

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

92. Petitioner’s incarceration without a bond hearing, which has lasted now almost three months and will likely extend much longer, violates the Due Process Clause.

93. 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.

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;²¹
3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, such as electronic monitoring or reporting requirements, and order that he not be re-detained without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a);
4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

²¹ 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).

- a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
 - b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and
 - c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.
5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
 6. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: February 3, 2026
Brooklyn, NY

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