UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUIS ARNOLDO CONTRERAS ALVAREZ Petitioner, -against- KRISTI NOEM, Secretary of the Department of Homeland Security, TODD LYONS, Field Office Director for U.S. Immigration and Customs Enforcement, ANTHONY J. LAROCCO, Sheriff of the Nassau County Correctional Center, Respondents.	**Docket No. 2:26-CV-01224** **(Hon. DeArcy Hall)**

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PETITIONER'S ORDER TO SHOW CAUSE AND PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner, Luis Arnoldo Contreras Alvarez, respectfully submits this Memorandum of Law and the Declaration of Michael Fishman in further support of his Petition a for Writ of Habeas Corpus, ECF No. 1 (the "Petition" or "Pet."), and Order to Show Cause, dated March 4, 2026 and in reply to Respondents' opposition thereto.

PRELIMINARY STATEMENT

The Petition should be granted because, as demonstrated, Petitioner was unlawfully stopped, arrested and detained by U.S. Immigration and Customs Enforcement ("ICE") officers without probable cause or a valid arrest warrant, or individualized custody determination, and ICE continues to detain him *indefinitely* without any legal basis. Additionally, Petitioner is clearly not a flight risk or a danger to the community as he has been residing in the community since October 2002 and has a viable avenue of relief with a pending Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act ("NACARA") with the U.S. Custom and Immigration Services ("USCIS"). His continued improper detention is in violation of the Fifth Amendment to the U.S. Constitution and the Immigration and Nationality Act ("INA").

In response, Respondents rely almost exclusively on the same argument which has been repeatedly rejected by the Eastern District of New York (and other courts) that Petitioner is somehow mandatory detainable under §1225(b)(2)(a) even though he has been living in the United States for approximately twenty (20) years before he was wrongfully detained. As described by one Eastern District Judge in Flores-Linares v. Bondi, "Court after court, judge after judge, in district after district has rejected this argument." 2026 WL 179208,*5 (E.D.N.Y. Jan. 22, 2026).

In furtherance to the irrationality of this argument, Petitioner was interviewed by USCIS in 2013 and previously placed in removal proceedings which was voluntarily dismissed upon joint

motion by Respondent/DHS, and at no time did Respondents detain Petitioner who they now call mandatory detainable under §1225(b)(2)(a).

Believing Petitioner was §1225(b)(2)(a) detainable, Respondents admittedly did not make an "individualized custody determination" as required under law. As repeatedly found by the East District of New York Federal Court (and sister courts), Due Process and INA require that ICE officials to make an "individualized custody determination" before DHS can exercise its discretion to detain a person under Section 1226(a) and 8 C.F.R. 1236.1(c)(8). No custody determination is even alleged to have been made, and no such documents are submitted by Respondents.

Next, without any exhibits or evidentiary support and based solely on the hearsay statements of a DHS "case manager" (and not the arresting officer with actual knowledge of the facts), Respondents argue that Petitioner's arrest and detention is fine. However, the hearsay declaration reveals that no arrest warrant or Notice to Appear ("NTA") existed "*prior* to the arrest and detention." Indeed, the declarant alleges that ICE officers just happened to stumble upon Petitioner when they were conducting an enforcement action in the area "against another individual" and to took him into custody. Now Respondents scramble for justification. As so eloquently stated by Judge Bulsara, "ICE does not have free-ranging ability to arrest and detain people, and figure out the reasons later" as they attempt to do here. See Gopie v. Lyons, Civ. 25-CV-05229, 2025 WL 3167130,*3 (E.D.N.Y. November 13, 2025).

Accordingly, for all the foregoing reasons, the Writ of Writ of Habeas should be granted in its entirety, and Petitioner should be immediately released.

STATEMENT OF FACTS

In the interest of brevity, we incorporate the allegations of the accompanying Petition as if restated in full herein (ECF No. 1).

ARGUMENT

I.
THE PETITION SHOULD BE GRANTED

Petitioner brings a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, which "authorizes a district court to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or law or treaties of the United States.'" Wang v. Ashcroft, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)); see also Hechavarria v. Sessions, 891 F.3d 49, 53 (2d Cir. 2018). As well established, Federal courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the constitutionality of their detention. Velasco Lopez v. Decker, 978 F.3d 842, 850 (2d Cir. 2020); see also Hechavarria, 891 F.3d at 53 ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.").

Additionally, as the case here "[c]laims that the discretionary process [used to detain someone]...was constitutionally flawed are cognizable in federal court on habeas because they fit comfortably within the scope of § 2241." Velasco Lopez, 978 F.3d at 850; Sumit v. Maldonado, 2026 WL 371132, 2026 WL 371132,*2 (E.D.N.Y. Feb. 10, 2026); Rodriguez-Acurio v. Almodovar, --- F.Supp.3d ----, 2025 WL 3314420 (E.D.N.Y. November 28, 2025).

Here, the Petition should be granted because in violation of the INA and Due Process of law, Petitioner was unlawfully arrested and detained without: (1) probable cause or a valid arrest warrant, (2) a previously initiated NTA or (3) an individualized custody determination, and

Petitioner is currently being held "indefinitely" as DHS claims he is mandatory detainable ineligible for bond (against the overwhelming case law to the contrary). See infra. Moreover, as conceded by Respondent, Petitioner is clearly not a flight risk or a danger to the community as he has been residing in the community since October 2002. Indeed, Respondents were well aware of his presence in the US, processed his earlier applications since 2013, and even voluntarily terminated his prior removal proceeding in June, 2023 (Pet., Exs. 3, 4.) Yet, they never previously detained him.

II.
AS REPEATEDLY HELD BY THE EASTERN DISTRICT AND OTHER COURTS, PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER § 1225(B)(2)(A) BECAUSE HE WAS LIVING IN THE U.S. FOR OVER 20-YEARS AT THE TIME HE WAS TAKEN INTO ICE CUSTODY.

Petitioner is detained under 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2)(A) because he was living in the United States (far from the boarder) for over 20 years before he was wrongfully detained. Seemingly in agreement with such interpretation, Petitioner was interviewed by USCIS in 2013 and previously placed in removal proceedings which were voluntarily dismissed upon Joint Motion of Respondent/DHS without detention.

Under § 1225, detention is mandatory (with certain exceptions) "in the case of an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted[.]" 8 U.S.C. § 1225(b)(2)(A). Under Section 1226, detention is discretionary "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). An individual who is detained pursuant to Section 1226 is entitled to an individualized custody determination upon arrest and to receive a bond redetermination hearing before an immigration judge upon request. 8 C.F.R. §§ 1003.19; 1236.1(c)(8), (d)(1). New York law holds that § 1225 does not apply to individuals who

are present in the United States away from the board at time of detention (as the case here). See id.

Respondents' expansive interpretation of the statute and argument that "every [immigrant is an] applicant for admission is seeking admission and therefore covered by § 1225(b)(2)(A)" regardless of years of presence in the United States or distance from the boarder at time of detentions has been almost universally rejected by the Eastern District, as well as other courts (Respondents MOL at pg. 9-10). See Padilla Molina v. DeLeon, 25-cv-06526, 2025 WL 3718728,*3 (E.D.N.Y. Dec. 23, 2025) ("This Court agrees with Petitioner that he is detained subject to Section 1226, not Section 1225. In so holding, the Court joins the hundreds of district court decisions that have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA.") (collecting cases); Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 490–91 (S.D.N.Y. 2025) ("[T]he line historically drawn between sections 1225 and 1226, which mak[es] sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens seeking admission into the country, whereas section 1226 governs detention of non-citizens already in the country.... This Court has similarly been unable to identify any authority to support Respondents' expansive interpretation of § 1225(b)." (quotations omitted)); Ulloa Montoya v. Bondi, No. 25-CV-6363, 2025 WL 3718694,*3 (E.D.N.Y. Dec. 23, 2025) (same); Pesantez Castro v. Maldonado, 25-CV-06844, 2025 WL 3723966,*1 (E.D.N.Y. Dec. 23, 2025) ("at the time of Petitioner's arrest, he was not "seeking admission" within the scope of Section 1225; rather, he had been living in the United States for over four years. In arguing to the contrary, Respondents merely regurgitate the same arguments that this Court and many other courts have already rejected"); Rodriguez-Acurio v. Almodovar, -- F. Supp. 3d --, No. 25-CV-6065, 2025 WL 3314420,*23 (E.D.N.Y. Nov. 28, 2025) ("[T]he

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." (quoting *Barco Mercado v. Francis*, -- F. Supp. 3d --, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025)).

Instead, case law finds that such individuals are detained pursuant to Section 1226 and entitled to an "individualized custody determination" from DHS upon arrest, and to receive a "bond re-determination" hearing before an immigration judge upon request. See id.

Like here, the petitioner in Molina was undocumented and living in the United States for 12 years (here over 20) when he was stopped and improperly detained by ICE. Molina filed a writ of habeas corpus for his release and DHS argued that he was subject to mandatory detention under § 1225 – for the same reasons Respondents argue here. In rejecting DHS's argument and granting the Writ, the Eastern District Court held:

> This Court agrees with Petitioner that he is detained subject to Section 1226, not Section 1225.[2] In so holding, the Court joins the hundreds of district court decisions that have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA. See, e.g., Yao v. Almodovar, No. 25-cv-9982, 2025 WL 3653433, at *6 (S.D.N.Y. Dec. 17, 2025) (rejecting Respondents' interpretation of Section 1225 based on the plain language of Sections 1225 and 1226, as well as the fact that "[Sections] 1225 and 1226 are directed to different stages in a noncitizen's interactions with immigration authorities"); O.F.B. v. Maldonado, No. 25-cv-6336, 2025 WL 3277677, at *4 (E.D.N.Y. Nov. 25, 2025) (rejecting Respondents' statutory interpretation and reasoning that it "only makes sense if you read Section 1225 in a vacuum"); Sarmiento Guerrero v. Noem, No. 25-cv-5881, 2025 WL 3214787, at *3–5 (E.D.N.Y. Nov. 18, 2025) (concluding that Congress meant "applicant for admission" and "alien seeking admission" to have distinct meanings, and noting that other provisions of Section 1225, as well as that provision's title and position within the INA, all indicate that Section 1225 deals with individuals arriving at the

> nation's borders); Hyppolite v. Noem, No. 25-cv-4304, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (applying canons of statutory interpretation to find that " 'seeking admission' is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"); Artiga v. Genalo, No. 25-cv-5208, 2025 WL 2829434, at *7–8 (E.D.N.Y. Oct. 5, 2025) (similar); J.U. v. Maldonado, No. 25-cv-04836, 2025 WL 2772765, at *7–8 (E.D.N.Y. Sept. 29, 2025) (similar); Demirel v. Fed. Detention Ctr., No. 25-cv-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (collecting cases from around the country); Centeno Ibarra v. Warden of the Fed. Det. Ctr. Philadelphia, No. 25-cv-6312, 2025 WL 3294726, at *7 (E.D. Pa. Nov. 25, 2025) ("The canon of constitutional avoidance favors the statutory interpretation which applies § 1226 detention to noncitizens like [the Petitioner] because it avoids the potential constitutional due process concerns that the government's interpretation would raise.").
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> The Seventh Circuit, the only Court of Appeals to have addressed this interpretive question, recently reached the same result. Castanon-Nava v. U.S. Dep't of Homeland Sec., No. 25-3050, 2025 WL 3552514, at *8–10 (7th Cir. Dec. 11, 2025) (finding that the government defendants were not likely to prevail on this issue because "ICE's authority to detain a noncitizen discovered within the country derives from § 1226(a) and not from § 1225(b)[,]" and "Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction").
>
> Although the Supreme Court has not decided the question, dicta from Jennings v. Rodriguez lends further support to Petitioners' interpretation. 583 U.S. 281, 289 (2018) (explaining that Section 1225 "authorizes the Government to detain certain aliens seeking admission into the country," whereas Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings") (emphasis added).
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> Accordingly, the Court holds that Section 1225 does not apply to Petitioner, who has been present in the United States for years and so was not "seeking admission" to this country at the time of his arrest. Petitioner's detention without an individualized custody determination or a bond hearing was unlawful because it failed to comply with the procedural guarantees set forth in 8 U.S.C. § 1226(a) and its implementing regulations.

Padilla Molina v. DeLeon, 2025 WL 3718728 at *3; see Flores-Linares v. Bondi, 26-CV-00298, 2026 WL 179208 (E.D.N.Y. January 22, 2026); Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 490–91 (S.D.N.Y. 2025); Ulloa Montoya v. Bondi, No. 25-CV-6363, 2025 WL 3718694,*3 (E.D.N.Y. Dec. 23, 2025); Rodriguez-Acurio v. Almodovar, -- F. Supp. 3d --, No. 25-CV-6065,

2025 WL 3314420,*23 (E.D.N.Y. Nov. 28, 2025); Barco Mercado v. Francis, -- F. Supp. 3d --, No. 25-CV-6582, 2025 WL 3295903,*4 (S.D.N.Y. Nov. 26, 2025); Hung v. Almodovar, 25-CV-9346, 2025 WL 3295912,*3 (S.D.N.Y. November 25, 2025).

Moreover, DHS' actions in this matter are in opposite to its argument for mandatory detention. Petitioner was interviewed by USCIS in 2013 and previously placed in removal proceedings, which DHS choose to voluntarily dismiss by Joint Motion and never tried to detain him; yet now somehow claims he is subject to mandatory detention (Pet., Ex.4). See Sumit v. Maldonado, 2026 WL 371132, 2026 WL 371132,*2 (E.D.N.Y. Feb. 10, 2026) ("The Court adheres to its reasoning in *Ye*, and finds for the same reasons, as well as the reasons in Judge Hector Gonzalez's decision in O.F.B. v. Maldonado, No. 25-CV-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025), that the petitioner, who was previously released on his own recognizance on November 30, 2023, is currently being detained pursuant to 8 U.S.C. § 1226 and in violation of his rights to due process under the Fifth Amendment of the Constitution.").

Accordingly, Petitioner is detained under 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2)(A) because he was living in the United States (far from the boarder) for approximately 20 years before taken into custody in accordance with the caselaw, and thus, entitled to an individualized custody determination which Respondents failed to do in violation of the law.

III.
RESPONDENTS ADMITTEDLY DID NOT MAKE AN "INDIVIDUALIZED CUSTODY DETERMINATION" AS REQUIRED UNDER LAW

As repeatedly found by this Court (and sister courts), Due Process and the INA require that ICE officials to make an "individualized custody determination" before DHS can exercise its discretion to detain a person under Section 1226(a) and 8 C.F.R. 1236.1(c)(8). No custody determination is even alleged to have been made here (and no such documents are submitted) requiring Petitioner's immediate release. See Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976); Kelly v. Almodovar, 25-CV-6448, 2025 WL 2381591,*3 (S.D.N.Y Aug. 15, 2025) ("[T]he absence of any deliberative process prior to, or contemporaneous with, the deprivation ... a writ of habeas corpus is the only vehicle for relief."); Tumba v. Francis, 25-CV-8110, 2025 WL 3079014,*9 (S.D.N.Y. Nov. 4, 2025) ("Respondents do not argue that Petitioner was afforded any sort of process before her re-detention.... She is therefore entitled to release."); J.U. v. Maldonado, 25-CV-04836, 2025 WL 2772765,*10 (E.D.N.Y. September 29, 2025) (finding violation and granting writ where "no individualized determination was made prior to or contemporaneously with the decision to detain Petitioner"); Valdez v. Joyce, No. 25-CV-4627, 2025 WL 1707737,*4 (S.D.N.Y. June 18, 2025) ("[T]he process Respondents provided prior to his redetention was 'absolutely none.' Given the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents failure to show a significant interest in Petitioner's detention, Petitioner is entitled to more process than he received.").

As well established, "*before* the Government may exercise such discretion to detain a person, Section 1226(a) and 8 C.F.R. 1236.1(c) (8) require ICE officials to make an individualized custody determination." Gopie v. Lyons, 25-CV-05229, 2025 WL 3167130,*2 (E.D.N.Y. Nov. 13, 2025); Clarke v. U.S. Department of Homeland Security, 25-CV-6773, 2025 WL 3674471,*8

(E.D.N.Y. Dec. 18, 2025) ("ICE must allow the noncitizen to demonstrate to the satisfaction of the officer that [ ] release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding...And '[a]n individual detained pursuant to Section 1226(a) who identifies some defect in the process governing her detention can raise that defect in a habeas action seeking release (citations omitted).'" Id. Indeed, "the requirement that a custody determination by an ICE officer *before* the person is detained— and not afterwards, without the participation of the person being arrested—is required by ICE's own regulation, 8 C.F.R. 1236.1, and the due process clause, which in this context requires *pre*-deprivation process before someone is deprived of their liberty". Gopie v. Lyons, WL 3167130 at *4 (citations omitted).

Here, Respondents do not even suggest that it made an individualized custody determination (no facts, argument or evidence is presented) wrongfully believing Petitioner was §1225(b)(2)(a) detainable so it did not have to. Respondent's failure to make an "individualized custody determination" as required under law warrants granting of the Writ and Petitioner's immediate release for custody. See Hung v. Almodovar, 25-CV-9346, 2025 WL 3295912,*3 (S.D.N.Y. November 25, 2025)[1](Writ granted, "there is no evidence of 'an individualized assessment as to [Mr. Huang's] dangerousness or flight risk, or any kind of process at all sufficient to qualify as a valid exercise of discretion.' Indeed, there is no evidence of any exercise of

[1] As citied in Hung v. Almodovar, 2025 WL 3295912, at footnote 5, "Numerous courts have similarly held that detention on a discretionary basis pursuant to § 1226(a) requires such an individualized assessment. *See, e.g.*, *Martinez v. Hyde*, 25 Civ. 11613, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 25 Civ. 02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); *Lopez-Campos v. Raycraft*, 25 Civ. 12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, 25 Civ. 01093, Doc. 20 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, 25 Civ. 02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, 25 Civ. 02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, 25 Civ. 11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, 25 Civ. 01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, 25 Civ. 3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 25 Civ. 12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, 25 Civ. 02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado Bautista v. Santacruz*, 25 Civ. 01874, *13 (C.D. Cal. July 28, 2025)."

discretion at all. For the reasons given in *Lopez Benitez*, the Court holds that Mr. Huang's arrest and detention on November 8, 2025 violated his rights under the Due Process Clause."); Clarke v. U.S. Department of Homeland Security, 25-CV-6773, 2025 WL 3674471,*8 (E.D.N.Y. Dec. 18, 2025 (Writ granted, "Notice of Custody Determination was unsigned, provides only that the officer 'determined that a final administrative determination in your case, you will be: Detained by [DHS]... the form 'makes no mention of whether the detention determination was made as a matter of discretion, or part of a mandatory policy, or what was considered in reaching the result" not enough to show a proper individualized custody determination); Padilla Molina v. DeLeon, 25-cv-06526, 2025 WL 3718728,*5 (E.D.N.Y. Dec. 23, 2025) (Writ granted, "the Court additionally finds that the Respondent's detention of petitioner without an individualized custody determination or bond hearing violated his Fifth Amendment right to due process"); Pesantez Castro v. Maldonado, 25-CV-06844, 2025 WL 3723966, *n.2 (E.D.N.Y. Dec. 23, 2025) ("Respondents also do not dispute that Petitioner did not receive an individualized custody determination before or at the time of his arrest. Both failures may provide additional independent bases for granting the writ."); Arango v. Genalo, 25-CV-6720, 2025 WL 3637500, *2 (E.D.N.Y. Dec. 16, 2025) (Writ granted, "there is no indication in the record that a custody determination was made before or contemporaneous with Arango's December 3, 2025, arrest. This is a violation of Arango's due process rights.").

Accordingly, the Writ should be granted, and Petitioner immediately released.

IV.
PETITIONER'S DUE PROCESS RIGHTS WERE FURTHER VIOLATED BECAUSE HE WAS ARRESTED AND DETAINED WITHOUT PROBABLE CAUSE, OR AN ARREST WARRANT OR NTA ISSUED ***BEFORE*** THE ARREST AND IMPROPER DETENTION

Petitioner's Due Process rights were further violated because he was arrested and detained without probable cause and before any NTA or valid arrest warrant was ever issued, further warranting the granting of the Writ and his immediate release from ICE custody.

As well established, in order to comply with the INA and Due Process Clause, DHS must have probable cause including the issuance of a proper and valid NTA and arrest warrant before taking an individual into custody. See Gopie v. Lyons, 25-CV-05229, 2025 WL 3167130,*1 (E.D.N.Y. Nov. 13, 2025); Clarke v. U.S. Department of Homeland Security, 25-CV-6773, 2025 WL 3674471,*8 (E.D.N.Y. Dec. 18, 2025).

As explained by the Eastern District court in Gopie v. Lyons,

> The NTA begins the removal process, and at that time or after its issuance, the Government can then effectuate his arrest, and, if necessary, detention, until removal proceedings are completed. *Niz-Chavez v. Garland*, 593 U.S. 155, 157–58 (2021) ("The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, requires the government to serve 'a notice to appear' on individuals it wishes to remove from this country."). 8 C.F.R. § 1236.1 provides, in relevant part, "[a]t the time of issuance of the notice to appear, or at any time thereafter ... the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest." 8 C.F.R. § 1236.1.

25-CV-05229, 2025 WL 3167130,*1 (E.D.N.Y. Nov. 13, 2025).

Indeed, courts have routinely granted Writs of Habeas Corpus in similar instances where DHS has failed to comply with such laws. See Pesantez Castro v. Maldonado, 25-CV-06844, 2025 WL 3723966, *n.2 (E.D.N.Y. Dec. 23, 2025) (Writ granted, "Petitioner was not served with either an NTA or an Arrest warrant at the time of his arrest, but instead was served with them at some point thereafter... [such] failures may provide additional independent bases for granting the

writ."); Clarke v. U.S. Department of Homeland Security, 25-CV-6773, 2025 WL 3674471,*2 (E.D.N.Y. Dec. 18, 2025) (Writ granted, "The NTA [must have] preceded Clark's arrest; if not, then ICE improperly arrested him."); Arango Genalo, 25-CV-6720, 2025 WL 3637500,*2 (E.D.N.Y. Dec. 16, 2025) (same); Sumit v. Maldonado, 2026 WL 371132, 2026 WL 371132,*2 (E.D.N.Y. Feb. 10, 2026).

Here, noticeably absent from Respondents submission is any purported NTA or Form I-200 Warrant of Arrest or any other such documents. Instead, they provide a dubious, nonspecific declaration from Kevin Samuel a DHS Deportation Officer who "manages the cases of aliens in immigration proceedings" – and not the arresting officer with actual knowledge of the fact – who merely looked at "electronic records and databases." Notably, Petitioner was not in proceedings at the time of arrest so he would not be in Officer Samuels purview questioning the value of his declaration.

In any event, Officer Samuel's statements, while vague and inconsistent appear to confirm that no NTA or Arrest Warrant existed *prior to* the arrest and unlawful detention. Indeed, Officer Samuel states that on March 1, 2026 ICE officers just happened to stumble on Petitioner while looking for another individual whose description supposedly matched Petitioner, plainly indicating that no NTA or Arrest Warrant for Petitioner existed at that time since they were not looking for him (Samuel Dec. at ¶6).[2]

Trying to confuse the issue and hide DHS' mistakes, in his declaration Officer Samuel conflates warrant "issuance" and "execution" (still without reference to any NTA documents) in stating "a Warrant for Arrest of Alien, Form-200, was executed in the field. Petitioner then was arrested" (Samuel Dec. at ¶9). He does not say that a valid Warrant for Arrest of Alien, Form I-

[2] We note that any prior NTA was voided when DHS voluntarily terminated his prior removal proceedings.

200 actually existed at the time of the field arrest to be so "executed." As well established, the issuance of an NTA begins that procedure, then a Form I-200 Warrant can be issued and finally the arresting officer can "execute" the Warrant by performing the action authorized by the Warrant. See FED. R. CRIM. P. 4; Simon v. City of New York, 893 F.3d 83, 94-95 (2d Cir. 2018); see also Gopie v. Lyons, 25-CV-05229, 2025 WL 3167130,*1 (E.D.N.Y. Nov. 13, 2025).

Finally, in ambiguous, jumbled up fashion, Officer Samuel states "that same day, ICE personally served Petitioner with" a bunch of forms. In another sentence he says, "ICE also served Petitioner with a Notice to Appear" (Samuel Dec. at ¶9). However, he does not say when any of these documents were issued and none of them are provided with Respondents' opposition papers.

Courts have disregarded similar affidavits as "dubious" and granted Writs where DHS fails to provide the properly issued documents authorizing the arrest and detention of a noncitizen (like here). See Clarke v. U.S. Department of Homeland Security, 25-CV-6773, 2025 WL 3674471,*8 (E.D.N.Y. Dec. 18, 2025) (Writ granted, "the declaration filed by ICE becomes dubious [when] ICE agent swears that based on that investigation [ICE Officer] executed a Form I-200, Warrant for Arrest'" and the provided warrant is unsigned and missing checked boxes/information"); see also Sumit v. Maldonado, 2026 WL 371132, *1 (E.D.N.Y. Feb. 10, 2026) (Writ granted, "Although the ICE officer had a form arrest warrant, the document provides no justification to arrest the petitioner. There is no narrative establishing probable cause, and the Authorized Immigration Officer who filled out the warrant did not check any of the boxes that would have explained why he had probable cause to believe that the petitioner was removable from the United States.").

Accordingly, the Writ should be granted, and Petitioner should immediately be release from ICE custody.

V.

AS CONCEDED BY RESPONDENTS IN VOLUNTARILY DISMISSING THE PRIOR IMMIGRATION PROCEEDINGS, PETITIONER IS NOT A FLIGHT RISK NOR DANGER TO THE SOCIETY

Respondents concede that Petitioner is not a flight risk nor danger to society and does not argue otherwise in their opposition papers. In recognition of same, Respondents voluntarily dismissed his prior immigration proceeding (by joint motion) and never previously tried to detain him (Pet., Ex.4).

Moreover, Petitioner has a viable avenue of relief with a pending Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act ("NACARA") with USCIS (Pet., Ex. 5). While Respondents claim in their opposition papers that they have no record of such application in their system, it received the mailing containing same and cashed Petitioner's filing fee check for such application (Pet., Ex.19).

Hence, Petitioner is not a flight risk nor danger to society, and the Writ should be granted accordingly.

CONCLUSION

For all the foregoing reasons, as well as for the reasons set forth in the accompanying Petition and Declaration in support, Petitioner respectfully request that the Order to Show Cause and Petition for a Writ of Habeas Corpus be granted in its entirety and that Petitioner be immediately released from ICE Custody, together with such other and further relief as this Court deems just and proper.

Dated: Hempstead, New York
March 16, 2026

Respectfully submitted,

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