IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RAVIRAJH SIVANANTHARSHA,
***Petitioner*,**

v.

FREDERICK J. AKSHAR II,
in his official capacity as Warden of the Broome County Correctional Facility;

JAMES BAUSCH,
In his official capacity as Acting Deputy Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement;

PHILIP RHONEY,
In his official capacity as Acting Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement;

TODD LYONS,
In his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

PAMELA BONDI ,
In her official capacity as U.S. Attorney General;

KRISTI NOEM,
In her official capacity as Secretary of Homeland Security,

Respondents.

Civil Action No. 9:26-cv-398 (AJB)

Immigration No. [redacted]

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW

TABLE OF CONTENTS

FACTS AND PRELIMINARY STATEMENT **1**

THE PARTIES **4**

CUSTODY **5**

JURISDICTION & VENUE **6**

I. SUBJECT MATTER JURISDICTION 6

II. PERSONAL JURISDICTION 7

III. VENUE 7

LEGAL FRAMEWORK WITH RESPECT TO DETENTION AUTHORITY AND BOND ELIGIBILITY **7**

LEGAL FRAMEWORK WITH RESPECT TO LIBERTY INTEREST **9**

PROLONGED DETENTION WITHOUT A BOND HEARING **12**

THE BURDEN OF PROOF IN BOND HEARINGS **14**

CLAIMS FOR RELIEF **17**

COUNT 1: VIOLATION OF THE INA **17**

COUNT 2: VIOLATION OF DUE PROCESS **18**

COUNT 3: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A), (B) **20**

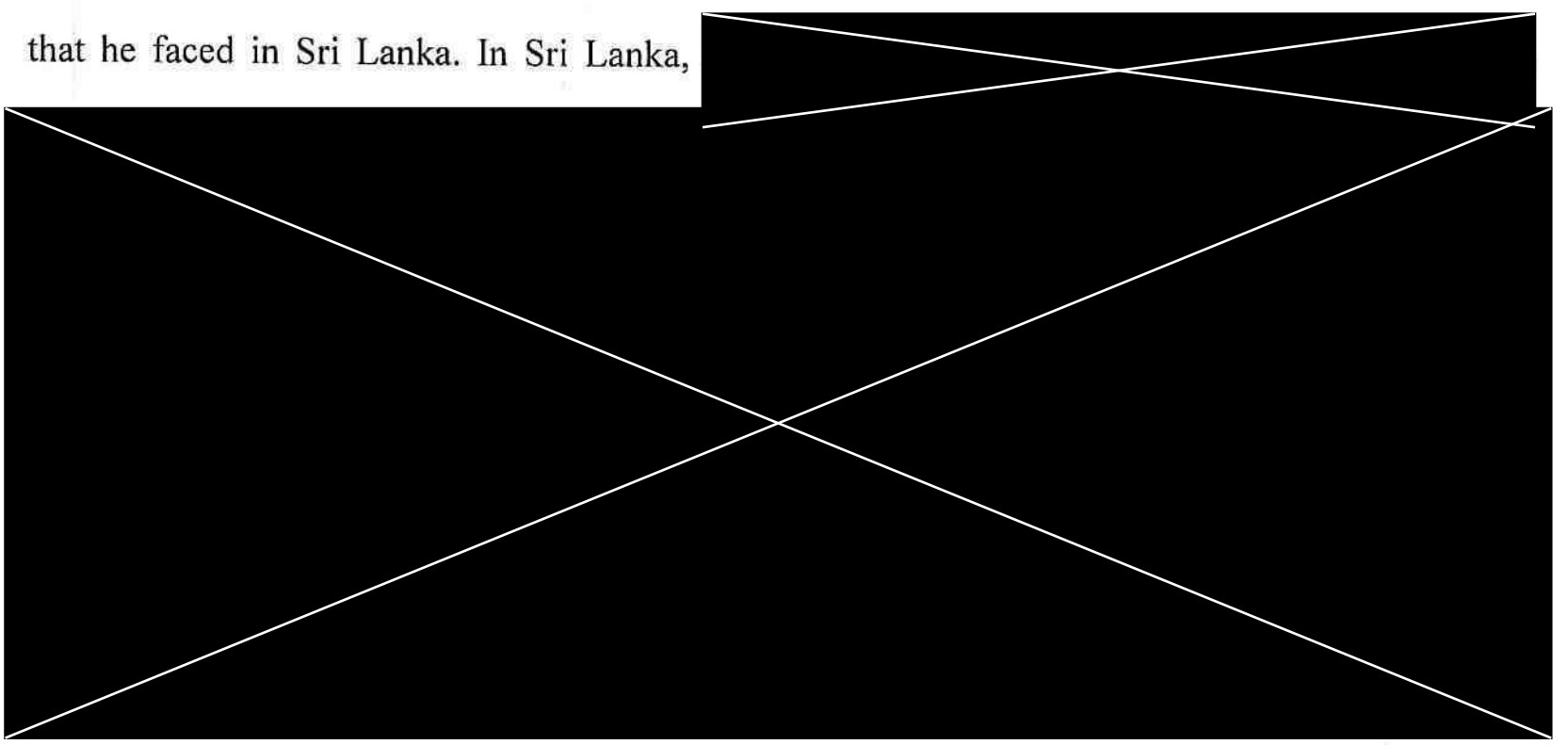
PRAYER FOR RELIEF **21**

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242 ..... **23**

FACTS AND PRELIMINARY STATEMENT

1. Petitioner Rivirajh Sivanantharsha is a citizen of Sri Lanka, born in 1995, who entered the United States without inspection seeking protection under the asylum laws. He was released on an immigration bond in the amount of $6,500 on or about April 29, 2020, and made a life in Buffalo, New York while pursuing his asylum matter. On July 19, 2025, while his asylum matter remained pending, he was arbitrarily and unlawfully re-detained by Respondents at his house in Buffalo, New York, despite not having violated any conditions of his bond. He has been detained since then, now for nearly eight months. He was denied a new bond by an immigration judge, under the rationale that he is being detained under 8 U.S.C. § 1225(b), under the government's bond denial policy. *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), which this Court has already held is unlawful. *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025). Petitioner seeks relief from this Court in the form of immediate release, since he already posted a bond yet was arbitrarily re-detained by Respondents without due process.

2. Petitioner came to the United States to seek asylum, withholding of removal, and protection under the Convention Against Torture due to severe political persecution and torture that he faced in Sri Lanka. In Sri Lanka,



[redacted] He then fled to the capital city of Sri Lanka, Colombia, eventually making his way to the United States.

3. After entering the United States without inspection and being detained, Petitioner was, on or about April 16, 2020, granted an immigration bond. An immigration judge ordered him released on a bond in the amount of $6,500.00. **See Exh. A, Bond Documents**.

4. On or about April 29, 2020, the bond amount was posted and Petitioner was released from custody.

5. When Petitioner was initially released from custody by Respondents on an immigration bond, they made a determination that he was neither a danger to the community nor a flight risk.

6. Petitioner timely filed his I-589, applying for Asylum, Withholding of Removal, and protection under the Convention Against Torture and was later granted an Employment Authorization Document (EAD).

7. Petitioner made a life in Buffalo, New York, while he pursued the lengthy process of seeking asylum.

8. Upon information and belief, at no point did Petitioner commit any crimes, nor did he violate any conditions of his release on an immigration bond.

9. On July 19, 2025, Respondents went to his house in Buffalo, New York, knocked the door, and detained him. Presumably, Respondents unilaterally revoked Petitioner's bond, despite having no lawful basis to do so.

10. Petitioner was not told why he was being re-detained.

11. Petitioner was not given a pre-deprivation hearing prior to being re-detained, nor was he given a reason for his re-detention or an opportunity to challenge any reasons why he was being re-detained.

12. At the time of re-detention, there had been no material changes in circumstances such that Petitioner had become a danger to the community or a flight risk.

13. On July 28, 2025, Petitioner filed a request for a new bond with the immigration judge.

14. A bond hearing was scheduled on August 6, 2025, but the immigration judge said that the issues in the bond matter were complex and should be further addressed in a written bond motion and that Petitioner should withdraw his bond motion and re-file it with additional argument.

15. On or about August 22, 2025, the Board of Immigration Appeals ordered Petitioner removed. Petitioner timely appealed that decision by way of a Petition for Review with the United States Court of Appeals for the Second Circuit, which remains pending.

16. Respondents asserted that they have authority to detain Petitioner under 8 U.S.C. § 1225(b), which is legally incorrect.

17. On September 25, 2025, Immigration Judge Charles Ouslander at the Ulster Immigration Court denied bond on the basis that "The Court lacks legal authority to hear Respondent's bond motion, pursuant to Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025)." **See Exh. B, Bond Denial Order.**

18. Petitioner remains detained at the Broome County Jail, having been denied bond. Now, Respondents are seeking to deport him to Sri Lanka despite the pendency of his appeal and the existence of the forbearance policy.

19. The re-detention of Petitioner without a pre-deprivation hearing violates his Fifth Amendment right to due process.

20. The mandatory detention of Petitioner without an individualized bond determination also violates Petitioner's due process rights.

21. The prolonged detention of Petitioner without an individualized bond hearing also violates Petitioner's due process rights.

22. Without relief from this Court, Petitioner faces the prospect of many additional months, or even years, in immigration custody, as he continues to seek asylum and related relief in the United States.

23. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release, since Respondents already determined that he was not a flight risk or a danger to the community in a bond hearing before an immigration judge and he was released after posting that bond, yet they arbitrarily and unlawfully re-detained him in violation of his right to due process.

THE PARTIES

24. Petitioner Rivirajh Sivanantharsha is detained in the custody of ICE. He is being held at the Broome County Correctional Facility, which is located in the Northern District of New York, under the auspices of the Deputy Field Office Director based at the Buffalo Federal Detention Facility (BFDF) in Batavia, New York, which is a suboffice of the Buffalo, NY ICE Enforcement and Removal Operations (ERO) office. His custody and governmental actions related to his removal are likewise controlled by the Buffalo Field office of ICE.

25. Respondent Frederick J. Akshar II is the sheriff of Broome County and the warden of the Broome County Correctional Facility, which is where Petitioner is being held in

ICE custody. He is the immediate custodian of the Petitioner. His office is located at 155 Lt Vanwinkle Dr, Binghamton, NY 13905.

26. Respondent James Bausch is the Buffalo, NY Acting Deputy Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F,3d 688, 690 (lst Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Bausch's office is at 250 Delaware Avenue, Floor 7, Buffalo, NY 14202 and/or at the Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, NY 14020.

27. Respondent Philip Rhoney is the Buffalo, NY Acting Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F,3d 688, 690 (lst Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Rhoney's office is at 250 Delaware Avenue, Floor 7, Buffalo, NY 14202 and/or at the Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, NY 14020.

28. Petitioner's custody and the governmental actions related to his potential removal from the district are likewise controlled by Respondents Lyons and Noem.

29. Respondent Pamela Bondi is the U.S. Attorney General and is in charge of the Executive Office for Immigration Review, which controls the Immigration Courts and the Board of Immigration Appeals.

CUSTODY

30. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE") at a contracted facility, the Broome County Correctional Facility. The Deportation Officer responsible for his case is stationed at the Buffalo Federal Detention

Facility ("BFDF"). The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. SUBJECT MATTER JURISDICTION

31. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

32. This Court has jurisdiction under 28 U.S.C, § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

33. 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9) do not bar the Court from exercising jurisdiction over a habeas corpus petition for a non-citizen detainee. *Lieogo v. Freden, et al.*, No. 6:25-CV-06615 EAW, 2025 WL 3290694 (W.D.N.Y. Nov. 26, 2025); see also *Mahdawi v. Trump*, 136 F.4th 443, 450 (2d Cir. 2025) (holding that unlawful detention claims are collateral to removal process and fall outside § 1252(g)'s narrow jurisdictional bar); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." (cleaned up)); *Jennings v. Rodriguez*, 583 U.S. 281, 295 n.3 (2018) ("The question is not

whether detention is an action taken to remove an alien but whether the legal questions in this case arise from such an action. . . . [T]hose legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9).").

II. PERSONAL JURISDICTION

34. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically within the district).[1]

III. VENUE

35. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973), venue lies in the United States District Court for the Northern District of New York, the judicial district in which Petitioner is being detained. Petitioner is being detained at the Broome County Correctional Facility and his detention falls under the jurisdiction of the ICE Field Office of Buffalo, New York, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

LEGAL FRAMEWORK WITH RESPECT TO DETENTION AUTHORITY AND BOND ELIGIBILITY

36. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§

[1] Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interests of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

38. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

39. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

40. This case concerns the detention provisions at §§ 1226(a) and 1225(b).

41. The detention provisions at § 1226(a) and § 1225(b) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

42. Immigration authorities allege that the detention authority that initially vests in them under 8 U.S.C. § 1225(b) never expires, and permits indefinite mandatory detention with no due process right to a bond hearing, even where a noncitizen has resided in the country for years, or even decades before being re-detained by them.

43. However, 8 U.S.C. § 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" and "the context of § 1225 as a whole supports a limited scope for § 1225(b)," which "strongly indicates that the statute governs the entrance of noncitizens to the United States." *Da Cunha v. Freden*, No. 25-CV-6532-MAV, 2025 WL 3280575, (W.D.N.Y. Nov. 25, 2025); See also, e.g., *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025); *Quituizaca Quituisaca v. Bondi*, 25-cv-6527-

EAW (W.D.N.Y. Nov. 12, 2025); *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025).

44. Although the government will likely argue that Petitioner is detained under 8 U.S.C. § 1231, because his removal order is "administratively final," this is incorrect. Because his matter is presently before the Second Circuit on a Petition for Review, and a stay of removal is currently in place under the forbearance policy, this Court should construe his present detention as being under 8 U.S.C. § 1226(a). *See Enoh v. Sessions*, 236 F. Supp. 3d 787 (W.D.N.Y. 2017) ("since the Second Circuit stayed Enoh's removal, his removal proceedings have been "ongoing," and it therefore is more logical to view his detention as being under 8 U.S.C. § 1226(a).").

LEGAL FRAMEWORK WITH RESPECT TO LIBERTY INTEREST

45. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

46. In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons" who have never been in custody or convicted of any

crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 208 U.S. at 482. Although the government may restrict the individual "to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, his "condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, the parolee possesses a protected interest in his continued liberty. *Id.* at 481-84.

47. Respondents released Petitioner on a bond after determining that he did not pose a flight risk or danger to the community. Petitioner was able to apply for various immigration benefits, support himself, and work. His situation in the United States since his release has been "very different from that of confinement in a prison." *Morrissey*, 408 U.S. at 482. Thus, Petitioner has a protected liberty interest. See, e.g., *Perez v. Akshar, et al*, No. 9:26-cv-120-ECC (Coombe, J.) (N.D.N.Y., March 5, 2026); *See also Crespo Tacuri v. Genalo*, No. 25-cv-6896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (concluding that Petitioner had a "cognizable private interest in being freed from unlawful detention") (citing, among others, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by one's own government.")); *Fernandez Lopez v. Wofford*, 2025 WL 2959319 , at *4 (E.D. Cal. Oct. 17, 2025).

48. By detaining Petitioner without articulating a rationale based on his individualized circumstances, and by detaining him in contradiction of his individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA. Noori, 2025 WL 2800149 at * 10 (parolee developed a private interest in remaining free in the

one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, F.Supp.3d, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, F.Supp.3d, 2025 WL 1898025, * 14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

49. Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community before re-detaining him. See e.g., *Fernandez Lopez*, 2025 WL 2959319 at *8; *J.S.H.M v. Wofford*, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub); *Mata Velasquez v. Kurzdorfer*, F.Supp.3d, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process).

50. Further, Courts within this Circuit and nationwide are routinely granting immediate release to ameliorate unlawful detention. See, e.g., *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.) (ordering immediate release in matter where detention was unlawful); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025) (Sannes, C.J.) (same); *Solano v. Mason,* No. 2:26-cv-00045 (S.D.W.Va., Feb. 4, 2026) (ordering immediate release of detained noncitizen because "this Court has no faith that the Government would comply with an order to hold a bond hearing" and because "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence," also finding that a bond hearing would be futile because noncitizens are being "systematically

denied bond based on rationales that would not have been deemed sufficient weeks earlier" and therefore there is "no chance any hearing that occurred would comport with due process.").

PROLONGED DETENTION WITHOUT A BOND HEARING

51. In *Black v. Decker*, the Second Circuit stated that "*Demore* and *Zadvydas* imply, we agree, that any immigration detention exceeding six months without a bond hearing raises serious due process concerns" and that "The Supreme Court's jurisprudence regarding the government's authority to detain removable noncitizens under 8 U.S.C. § 1231(a)(6), while not binding here, is instructive," that jurisprudence being the holding in *Zadvydas v. Davis* where it recognized a "presumptively reasonable period of detention" of "six months," and required that beyond this period, if "there is no significant likelihood of removal in the reasonably foreseeable future, the Government ... respond with evidence sufficient to rebut that showing" to justify continued detention. *Black,* 103 F.4th at 150; citing *Zadvydas v. Davis*, 533 U.S. at 701.

52. Indeed, in *Black v. Decker*, the Second Circuit held that even criminal noncitizens who are subject to mandatory detention under 8 U.S.C. § 1226(c), are entitled to bond hearings if their detention becomes prolonged.

53. In *Velasco Lopez v. Decker,* a case in which the Second Circuit concluded that prolonged detention requires a bond hearing where the burden is on the government to prove by clear and convincing evidence that a noncitizen is a flight risk or a danger to the community, the Second Circuit applied the factors in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The three Mathews factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3)"the Government's interest, including the function involved and the fiscal

and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335, 96 S.Ct. 893. "The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action." *Id.* at 348, 96 S.Ct. 893.

54. With respect to the first factor, the Second Circuit pointed out that "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez* at 851, citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004). "Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez* at 851, citing *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

55. They went on to find that, with respect to the second factor, "the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," also weighed heavily in the Petitioner's favor. *Velasco Lopez* at 852. "At this stage in the *Mathews* calculus, the primary interest is not that of the Government but the interest of the detained individual." *Id., citing Hamdi,* 542 U.S. at 530, 124 S.Ct. 2633. Here, where Petitioner has not even been permitted to raise any arguments for bond, his interest is perhaps even more at risk of erroneous deprivation since, unlike the Petitioner in *Velasco Lopez*, who was afforded a bond hearing, Petitioner has been held with absolutely zero due process. The Court opined that "Moreover, 'as the period of ... confinement grows,' so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Velasco Lopez* at 853, citing *Zadvydas*, 533 U.S. at 701, 121 S.Ct. 2491.

56. With respect to the third factor, the Court acknowledged that "the Attorney General's discretion to detain individuals under § 1226(a) is valid where it advances a legitimate governmental purpose" but noted that "the Government has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight." *Velasco Lopez* at 854. The Court held that "it is improper to allocate the risk of error evenly between the individual and the Government when the potential injury is as significant as the individual's liberty" thus they concluded that "a clear and convincing evidence standard of proof provides the appropriate level of procedural protection." *Velasco Lopez* at 856.

THE BURDEN OF PROOF IN BOND HEARINGS

57. In *Jennings*, "the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does."[2] *Darko v. Sessions*, 342 F. Supp. 3d 429, 434-35 (S.D.N.Y. 2018); see *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019) (noting that section "1226(a) is silent on the issues of which party bears the burden of proof at a custody redetermination hearing and the quantum of evidence necessary to satisfy that burden"). Since *Jennings*, however, "a number of district courts have taken up the question left open by the Supreme Court, and there has emerged a consensus view that where, as here, the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Darko*, 342 F. Supp. 3d at 435 (collecting cases).

---

[2] "The Fifth Amendment's Due Process Clause forbids the [g]overnment to 'depriv[e]' any 'person . of . liberty . without due process of law.' " *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. It "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." Id. at 693, 121 S.Ct. 2491; see also *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("No one disputes that the Fifth Amendment entitles noncitizens to due process of law." (citing Reno v. Flores, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))).

58. This includes several courts in this Circuit. See *Adejola*, 408 F. Supp. 3d at 287 (Wolford, J.) ("This Court. concludes that the Fifth Amendment's Due Process Clause requires the [g]overnment to bear the burden of proving, by clear and convincing evidence, that detention is justified at a bond hearing under [section] 1226(a)." (citation and internal quotation marks omitted)); *Aparicio-Villatoro v. Barr*, 2019 WL 3859013, at *5-7 (W.D.N.Y. Aug. 16, 2019) (Telesca, J.) ("The Court agrees with the district court cases holding that allocating the burden to a noncriminal alien to prove he should be released on bond under [section] 1226(a) violates due process because it asks '[t]he individual . to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the [government].' " (quoting *Addington v. Texas*, 441 U.S. 418, 427, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979))). And more recently, in three cases like this one involving the misclassification of detention authority, Judge Vacca ordered the respondents to "conduct a constitutionally adequate bond hearing where the [g]overnment bears the burden of proving by clear and convincing evidence that [the p]etitioner[']s continued detention is justified based on his dangerousness to the community or risk of flight."See *Rezende v. Bondi*, Case No. 6:25-cv-6538, Docket Item 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No. 6:25-cv-6532, Docket Item 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 6:25-cv-6528, Docket Item 20 (W.D.N.Y. Oct. 17, 2025); but see *Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *7 (breaking with the other judge's decisions in the same district and holding that the burden being on the non-citizen does not violate due process for purposes of the "initial bond hearing").

59. Chief Judge Wolford explained that she "continues to be of the view that the Due Process Clause requires that individuals detained under [section] 1226(a) be provided a bond

hearing at which the government bears the burden of proving by clear and convincing evidence that the individual is either a danger to the community or a flight risk, and where the immigration judge must consider non-bond alternatives to detention or, if setting a bond, ability to pay"); *B.S. v. Joyce*, 2023 WL 1962808, at *4 (S.D.N.Y. Feb. 13, 2023) ("Like other courts faced with due process challenges to initial bond hearings since *Velasco Lopez*, this Court will continue to require the government to bear the burden of proof at all section 1226(a) bond hearings."); *Jimenez v. Decker*, 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (finding that "[r]espondents' interpretation of the Second Circuit's decision as holding that allocating the burden on the detainee at an initial bond hearing 'does not violate due process absent prolonged detention' proves too much").

60. The argument for burden shifting to where it belongs – on the government -- is even more pronounced where a detained non-citizen has been in custody for a lengthy period of time. The Second Circuit has held that "serious constitutional concerns" would arise absent "some procedural safeguard in place for immigrants detained for months without a hearing." *Lora v. Shanahan*, 804 F.3d 601, 614 (2d Cir. 2015); quoted by *Black v. Decker*, 103 F. 4th 133, 145 (2d. Cir. 2024) ("The Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under section 1226(c) without a bond hearing; at some point, additional procedural protections—like a bond hearing—become necessary.").

61. Indeed, in *Black v. Decker*, the Second Circuit stated that "*Demore* and *Zadvydas* imply, we agree, that any immigration detention exceeding six months without a bond hearing raises serious due process concerns" and that "The Supreme Court's jurisprudence regarding the government's authority to detain removable noncitizens under 8 U.S.C. § 1231(a)(6), while not binding here, is instructive," that jurisprudence being the holding in *Zadvydas v. Davis* where it

recognized a "presumptively reasonable period of detention" of "six months," and required that beyond this period, if "there is no significant likelihood of removal in the reasonably foreseeable future, the Government ... respond with evidence sufficient to rebut that showing" to justify continued detention. *Black,* 103 F.4th at 150; citing *Zadvydas v. Davis*, 533 U.S. at 701.

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

62. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

63. The mandatory detention provisions at 8 U.S.C. § 1225(b)(1) and (2) do not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country on parole and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a).

64. The application of § 1225(b) to Petitioner unlawfully mandates his continued detention and violates the INA.

65. The re-detention of Petitioner without a pre-deprivation hearing violates § 1226(a) of the INA, because Petitioner was granted a bond hearing under that statute and released after posting the bond that was set, yet later arbitrarily re-detained in an *ultra vires* manner by Respondents.

COUNT 2: VIOLATION OF DUE PROCESS

66. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

67. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

68. Petitioner has a fundamental interest in liberty and being free from official restraint.

69. The government's re-detention of Petitioner without any pre-deprivation process was unlawful, because he had already been released on a $6,500.00 bond that was still in effect.

70. Petitioner has a substantial liberty interest in remaining free from physical detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Having determined that Petitioner was neither a flight risk nor a danger at the time of his initial release, the Government cannot re-detain him on without a reasoned explanation or evidence of changed circumstances.

71. Because of Petitioner's profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

72. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

73. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for

[unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

74. The Immigration Courts, when they accept jurisdiction over bond, improperly place the burden of proof on the detained noncitizen. The Second Circuit has held that "shifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez v. Decker*, 978 F. 3d 842, 853 (2d. Cir. 2020) (holding that requiring the Government to prove that [a detained noncitizen] is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention "strikes a fair balance between the rights of the individual and the legitimate concerns of the state.").

75. Even in many instances where the burden has been shifted to the government upon the order of a federal judge, Immigration Judges are increasingly finding "flight risk" and denying bond to non-citizens, bowing to pressure from the Trump administration.

76. The immigration courts under this administration have essentially become "kangaroo courts" where due process is not respected[3], due to political pressure on immigration

---

[3] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview; see also *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp; Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/; Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside; Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025),

judges to satisfy the administration's thirst for mass deportations. The only appropriate remedy for the current state of affairs is for immediate release to be ordered by federal judges, as due process is otherwise violated. *See Solano v. Mason,* No. 2:26-cv-00045 (S.D.W.Va., Feb. 4, 2026) (ordering immediate release of detained noncitizen because "this Court has no faith that the Government would comply with an order to hold a bond hearing" and because "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence," also finding that a bond hearing would be futile because noncitizens are being "systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier" and therefore there is "no chance any hearing that occurred would comport with due process.").

COUNT 3: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Right

77. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

78. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

79. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with

---

https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste m-jeopardy-due-trumps-firings/409544/.

administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

80. Respondents' revocation of Petitioner's bond was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

81. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke a bond and under what circumstances.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order that Respondents not transfer the Petitioner outside of this District or outside of the United States during the pendency of this Petition;

(3) Expedite consideration of this action pursuant to 28 U.S.C. § 1657;

(4) Declare that Petitioner's bond revocation and re-detention violates the Due Process Clause of the Fifth Amendment and the INA;

(5) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and not re-detain Petitioner without a pre-deprivation hearing at which the government bears the burden to demonstrate, by clear and convincing evidence, that materially changed circumstances have occurred which make the petitioner a danger to the community or a flight risk and at which the immigration judge must consider non-bond alternatives to detention or, if setting a bond, the petitioner's ability to pay;

(6) Order Respondents to immediately return all of Petitioner's seized personal property, including but not limited to any government-issued identification or immigration

documents, such as a state driver's license or Employment Authorization Document (EAD) to the extent such items were seized and remain in Respondents' possession;

(7) Order Respondents not to release Petitioner in a manner that endangers his health or safety, and to ensure that he either has transportation to return to his home in Buffalo or to provide such transportation to him;

(8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(9) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law.

Dated: March 15, 2026

/s/ Matthew K. Borowski

Matthew K. Borowski
Attorney for Petitioner
4343 Union Road,
Buffalo NY 14225
E-mail: matthew@borowskilaw.com
Tel: 716-330-1503

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

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 15, 2026

/s/ Matthew K. Borowski

Matthew K. Borowski
Attorney for Petitioner
4343 Union Road,
Buffalo NY 14225
E-mail: matthew@borowskilaw.com
Tel: 716-330-1503