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

LARRY JAVIER TORREZ ARCE,
Petitioner,

v.

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

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

PHILIP RHONEY,
In her official capacity as Deputy 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;

MARKWAYNE MULLIN,
In her official capacity as Secretary of Homeland Security,

Respondents.

Civil Action No. 9:26-cv-501 ECC

Immigration No. [redacted]

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

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

FACTS 1

THE PARTIES 3

CUSTODY 4

JURISDICTION & VENUE 4

I. SUBJECT MATTER JURISDICTION 4

II. PERSONAL JURISDICTION 5

III. VENUE 5

LEGAL FRAMEWORK WITH RESPECT TO BOND 6

HE BURDEN OF PROOF IN BOND HEARINGS 10

CLAIMS FOR RELIEF 13

COUNT 1: VIOLATION OF THE INA 13

COUNT 2: VIOLATION OF DUE PROCESS 14

PRAYER FOR RELIEF 15

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242 17

PRELIMINARY STATEMENT

1. This matter involves an asylum seeker from Nicaragua, Mr. Larry Javier Torrez Arce ("Mr. Torrez"), who is currently being held in Respondents' custody at the CBP Border Patrol in Oswego, New York in violation of the law, purportedly under Section 1225(b)(2) and without an individualized bond determination, after ICE illegally detained him, upon information and belief, without a warrant, in Auburn, NY. Respondents will purport to hold him under 8 U.S.C. § 1225(b)(2)(A) and he is, therefore, not entitled to due process or a bond hearing. Petitioner entered the United States on a pre-approved humanitarian parole at the Miami International Airport on or about March 14, 2024 and was released on humanitarian parole after Respondents determined that he was neither a flight risk nor a danger to the community.

FACTS

2. Mr. Torrez entered the United States lawfully on March 14, 2024 on humanitarian parole at the Miami International Airport to join his wife who came to the United States on September 2023, fleeing political persecution in Nicaragua.

3. He is the father of a U.S. Citizen child, [redacted]

4. At the time of entry, Respondents released him on parole after determining that he was neither a flight risk nor a danger to the community.

5. Upon information and belief, he does not have any criminal convictions.

6. He filed his I-589, application for asylum on March 13, 2025. He was issued a work permit.

7. He was detained today, March 27, 2026 by ICE at the Laundromat near his home in Auburn, NY.

He is presently detained in the custody of Respondents at a Border Patrol facility in Oswego, NY and will likely be moved outside of this district imminently by Respondents.

8. Upon information and belief, ICE has or will issue a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

9. Also, ICE is likely to move Petitioner out of this judicial district to the Buffalo Federal Detention Facility some time later today or tomorrow.

10. Without relief from this Court, Petitioner faces the prospect of months, or even years, in immigration custody.

11. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

12. This systemic misclassification of people arrested inside the United States is in clear violation of the law. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which usually allows for release on bond and conditions during the pendency of immigration proceedings. It has been this way for decades. DHS and DOJ are now misclassifying these people as being subject to 8 U.S.C. § 1225, which does not allow for release

on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago.

13. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release, or in the alternative, his immediate release unless Respondents provide a bond hearing under § 1226(a) within seven days, and properly place the burden of proof on the government to show by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.

THE PARTIES

14. Petitioner is detained in the custody of ICE. He is being held Border Patrol office in Oswego, 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.

15. 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.

16. Respondent Philip Rhoney is the Buffalo, NY 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.

17. Petitioner's custody and the governmental actions related to his potential removal from the district are likewise controlled by Respondents Marich, Lyons and Mullin.

CUSTODY

18. Petitioner is in the physical custody of Respondents in Oswego, NY. 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

19. 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.

20. 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.

21. 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

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

III. VENUE

23. 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.

[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.

LEGAL FRAMEWORK WITH RESPECT TO BOND

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

25. 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. §§ 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).

26. 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).

27. 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).

28. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

29. The detention provisions at § 1226(a) and § 1225(b)(2) 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).

30. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

31. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

33. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

34. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

35. Virtually every federal court nationwide has rejected Respondents' new interpretation of the INA's detention authorities, with very few outliers. See, e.g., *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025); *Da Cunha v. Freden*, 25-CV-

06532-MAV, ECF No. 25 (W.D.N.Y. Oct. 20, 2025); *Quituizaca Quituisaca v. Bondi*, 25-cv-6527-EAW (W.D.N.Y. Nov. 12, 2025); *Najeem v. Freden*, 25-cv-6584-EAW (W.D.N.Y. Nov. 12, 2025); *Mendoza v. Bondi*, 25-cv-954-EAW (W.D.N.Y. Nov. 12, 2025); *Martinez v. Bondi*, 25-cv-6508-EAW (W.D.N.Y. Nov. 12, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-

11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

36. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

37. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

38. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

39. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at

the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

It makes no difference whether the noncitizen was released on an order of release on recognizance ("ORR") or "paroled" into the United States. Re-detention of a noncitizen who is present in the United States is only authorized under § 1226 and therefore a bond hearing is mandated by statute (as well as under the Fifth Amendment's right to due process). See *Cabrera Martinez v. Marich,* No. 25-CV-1110-LJV (W.D.N.Y. December 31, 2025) (holding that "someone who has overstayed parole is 'present' in the United States" and thus is not subject to mandatory detention); *Qasemi v. Francis, et. al.*, 25-cv-10029 (S.D. New York, December 17, 2025); *Campbell v. Almodovar*, 25-cv-9509-JLR (S.D. New York, December 10, 2025). *See also Alvarez Ortiz v. Freden*, --- F. Supp. 3d ---, 2025 WL 3085032, at *7 (W.D.N.Y. Nov. 4, 2025) (observing that "seeking admission" "must refer to seeking physical entry at the border, not the legal right to enter"); *Hyppolite v. Noem*, No. 25-cv-04304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (finding that "seeking admission" "refer[s] to those who are presenting themselves at the border, or who were recently apprehended just after entering").

41. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who has already entered and was residing in the United States at the time he was apprehended.

HE BURDEN OF PROOF IN BOND HEARINGS

42. 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 thereT 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).

43. The Western District has strongly come out in favor of placing the burden on the government in immigration bond proceedings. 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

[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))).

[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).

44. Chief Judge Wolford of the Western District of New York 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").

45. 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.").

46. 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

47. 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.

48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does 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 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), unless they are subject to § 1225(b)(1) (Physically at the border), § 1226(c) (Convicted of certain criminal offenses), or § 1231 (Subject to a final order of removal).

49. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT 2: VIOLATION OF DUE PROCESS

50. 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.

51. 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).

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

53. The government's detention of Petitioner without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates the right to due process.

54. The Immigration Courts, when they accept jurisdiction over bond, improperly place the burden of proof on the detained noncitizen, although the statute is silent as to where the burden lies. 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.").

55. 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 current administration.

56. The immigration courts under this administration have essentially become "kangaroo courts" where due process is not respected, due to political pressure on immigration 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 the current biased administrative tribunal does not comport with due process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Prevent the Petitioner's removal outside of this judicial district until this action is decided;

(3) Issue a temporary stay of Petitioner's removal until this action is decided;

(4) Declare ICE's July 8 policy and the BIA's *Matter of Yajure Hurtado* decisions unlawful;

(5) Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner;

(6) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and not re-detain Petitioner without a pre-deprivation hearing with adequate advance notice, or in the alternative, that Respondents release Petitioner immediately pending a bond hearing to be held pursuant to 8 U.S.C. § 1226(a) within 7 days at which the government bears the burden to demonstrate, by clear and convincing evidence, that the petitioner is 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;

(7) 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

(8) 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 27, 2026

/s/ Matthew K. Borowski

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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 27, 2026

/s/ Matthew K. Borowski

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