

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

RAFAEL ANDRES RUBIO BOHORQUEZ

Petitioner,

v.

MARKWAYNE MULLIN,

**in his official capacity as Secretary, U.S.
Department of Homeland Security;**

KENNETH GENALO,

**in his official capacity as Acting Field
Office Director, New York City Field
Office, U.S. Immigration & Customs
Enforcement;**

TODD BLANCHE,

**in his official capacity as Acting Attorney
General, U.S. Department of Justice;**

RAUL MALDONADO,

**in his official capacity as the
Metropolitan Detention Center Warden.**

Respondents.

Civil Action No. 26-cv-2053

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

INTRODUCTION

1. Respondents, U.S. Immigration and Customs Enforcement (“ICE”), are unlawfully detaining Petitioner Rafael Andres Rubio Bohorquez (“Mr. Rubio”) without an individualized assessment of his flight risk or danger to the community. Mr. Rubio, a data analyst with the New York City Council, was arrested by Immigration and Customs Enforcement while attending his asylum interview in January 2026. Mr. Rubio came to the United States escaping political persecution and was granted Temporary Protected Status (“TPS”) in 2021. He had applied for asylum to seek continued protection from political persecution in Venezuela following the termination of his TPS status.
2. Mr. Rubio’s detention at his asylum hearing was neither individualized nor justified. After his arrests, ICE attempted to justify its actions by pointing to Mr. Rubio’s dismissed arrest from 2023. ICE has failed to provide any evidence or explanation why a three-year-old dismissed arrest alone could form the basis for a finding that he poses a danger to the community and should be detained.
3. Accordingly, Mr. Rubio brings this petition seeking his immediate and unconditional release or, at minimum, a bond hearing in which the government carries the burden to justify his continued confinement. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).
4. Mr. Rubio also asks this Court to enjoin his transfer outside this district, **which he has been informed is imminently taking place today**. *Local 1814, Int’l Longshoremen’s Ass’n, AFL-CIO v. New York Shipping Ass’n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) (“Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, ‘the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction.’” (quoting *United States v. Int’l Bhd. of Teamsters*, 907 F.2d 277, 281 (2d Cir. 1990))); *L.G.M.*

v. LaRocco, 788 F. Supp. 3d 401, 403 (E.D.N.Y. 2025); *see also Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

PARTIES

5. Petitioner Rafael Andres Rubio Bohorquez is a native and citizen of Venezuela and resident of New York. ICE arrested him on January 12, 2026, at his asylum interview. He is currently detained at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York.
6. Respondent Markwayne Mullin is named in his official capacity as the Secretary of the United States Department of Homeland Security (“DHS”). In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Eastern District of New York, and is legally responsible for the pursuit of Petitioner’s detention and removal. As such, he is the legal custodian of Petitioner. Respondent Noem’s office is located at the United States Department of Homeland Security, Washington, DC 20528.
7. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, she is the legal custodian of Petitioner. Respondent Genalo’s office is located at 26 Federal Plaza, New York, NY 10278.
8. Respondent Todd Blanche is named in his official capacity as the Acting Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by EOIR pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Eastern District of New York and is legally responsible for

administering Petitioner's removal and bond proceedings and the standards used in those proceedings. As such, he is the legal custodian of Petitioner. Respondent Blanche's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

9. Respondent Raul Maldonado Jr. is named in his official capacity as the warden of MDC. In this capacity, he is responsible for the administration of MDC. As such, he is the legal custodian of Petitioner. Respondent Maldonado's office is located at 80 29th Street, Brooklyn, NY 11232.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).
11. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
12. Venue is proper in this district under 28 U.S.C. § 2241 and § 1391. *See Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973). Mr. Rubio is incarcerated at MDC, within this district; his immigration proceedings are venued here; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

13. Any attempt to seek release or bond from ICE or EOIR would be futile, such that Mr. Rubio is not required to exhaust administrative remedies.

14. Exhaustion in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *See Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021); *Joseph v. Decker*, No. 18-CV-2640, 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018).
15. Courts in this and neighboring districts “have excused exhaustion when considering whether ‘(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.’” *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025)(quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).
16. Mr. Rubio’s case satisfies all four requirements.
17. As to the first exception, “there are no administrative remedies that could provide Petitioner with the relief he seeks.” *J.U.*, 2025 WL 2772765, at *3. Like the petitioner in *J.U.*, Mr. Rubio “asserts that the original constitutional transgression occurred when ICE detained him . . . without first making an individualized determination that he posed a flight risk or danger to the community, or any other type of process that would justify the detention.” *Id.* Consequently, “the only cure to that unlawful detention is the vacatur of the detention—that is, the release of Petitioner from ICE custody.” *Id.* Because ICE failed to conduct any individualized review prior to Mr. Rubio’s detention, “a bond hearing for a post-deprivation review is wholly inadequate to remedy that [initial] unlawful detention.” *Id.*
18. Second, should he remain detained, Mr. Rubio faces irreparable injury: Mr. Rubio lacks adequate access to counsel and to the evidence necessary to litigate his asylum hearing.

19. Third, administrative appeal would be futile. While Mr. Rubio had a bond hearing before EOIR the burden was placed on him to demonstrate he was not a danger or a flight risk. Because EOIR places the burden on the noncitizen, there is no adequate way to seek review of ICE's failure to conduct an individualized assessment pre-deprivation or challenge ICE's failure to support its position throughout the duration of detention.
20. Finally, Mr. Rubio's claim "raises a substantial constitutional question that cannot be properly adjudicated administratively." *J.U.*, 2025 WL 2772765, at *4; *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497–98 (S.D.N.Y. 2025). Like the petitioner in *J.U.*, Mr. Rubio "contends that his continued detention . . . without DHS first making an individualized determination constitutes a violation of his due process rights." 2025 WL 2772765, at *4. Because "neither an immigration judge nor the BIA is positioned to properly adjudicate such a claim," Mr. Rubio should be excused from exhausting administrative remedies before seeking relief from this court. *Id.*; *see also Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4 (E.D.N.Y. Oct. 5, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 497–98.
21. Under the four criteria set forth in *Beharry*, Mr. Rubio should be excused from seeking release from ICE or EOIR, as such efforts would prove futile.

STATEMENT OF FACTS

22. Mr. Rubio is a native and citizen of Venezuela who resides in Brooklyn, New York. He entered the United States on a visitor's visa in 2017 and obtained Temporary Protected Status ("TPS") in 2021. He filed his asylum application in October 2025 and was detained attending his asylum interview, on January 12, 2026.
23. ICE filed a Notice to Appear against Mr. Rubio upon detention, and he was placed in removal

proceedings before the Varick Street Immigration Court.

24. On March 18, 2026, he was ordered removed after Mr. Rubio's application for asylum was deemed abandoned because his prior attorney failed to obtain his signature for the application. On April 7, 2026, after Mr. Rubio retained new counsel at the Bronx Defenders, the immigration court reopened Mr. Rubio's proceedings, finding that his prior counsel provided ineffective assistance. Mr. Rubio will be scheduled for a hearing before the Varick Street Immigration Court to have an opportunity to present his asylum claim.
25. Mr. Rubio had a bond hearing before the Immigration Court in February 2026. At the hearing, the Immigration Judge found that Mr. Rubio had failed to show he was not a danger to the community. Mr. Rubio filed a Notice of Appeal, which is pending before the Board of Immigration Appeals.
26. Mr. Rubio continues to be detained despite ICE's failure to conduct an individualized assessment before his detention. During his detention, he has not received a constitutionally adequate bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Procedural Due Process: Failure to Conduct an Individualized Pre-Detention Assessment)

27. Petitioner realleges and incorporates by reference each and every allegation contained above.
28. For the foregoing reasons, Respondents' detention of Petitioner violates the rights guaranteed to him by the Due Process Clause of the Fifth Amendment to the United States Constitution.

29. ICE provided no individualized assessment when they detained him.
30. As multiple courts in this District have held, no amount of post-deprivation process can cure the foregoing violation, and Petitioner should be released.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Failure to Provide Constitutionally Adequate Bond Hearing)

31. Petitioner realleges and incorporates by reference each and every allegation contained above.
32. Even if this Court finds that immediate release is not warranted, Mr. Rubio must be afforded a constitutionally adequate bond hearing where the government bears the burden to establish by clear and convincing evidence that he poses a danger to the community and flight risk, and that this danger cannot be mitigated by any conditions of release. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
2. Grant a writ of habeas corpus ordering Respondents to immediately and unconditionally release Petitioner from custody, or at minimum, order a bond hearing with the burden on the government;
3. Enjoin Petitioner's transfer outside of this district during the pendency of these proceedings;

- a. Order a stay of removal to retain the Court's jurisdiction while these proceedings are pending;
- b. Grant such further relief as this Court deems just and proper.

Dated: 4/7/2026
Bronx, NY

Respectfully submitted,

/s/ Nhu-Y Ngo
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Counsel for Petitioner

Exhibit A: ICE Detainee Locator

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 4/7/2026

/s/ Nhu-Y Ngo
Nhu-Y Ngo