

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

C.H.G.,

Petitioner,

v.

Case No. 26-2171

Kenneth GENALO, Field Office Director
of Enforcement and Removal Operations,
New York Field Office, Immigration and
Customs Enforcement; Raul
MALDONADO JR., Warden of
Metropolitan Detention Center;
Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security; Todd
BLANCHE, Acting U.S. Attorney
General; Daren K. MARGOLIN, Director,
Executive Office for Immigration Review,

Respondents.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, C.H.G.,¹ is a 59-year-old Venezuelan national who fled his home country to escape political persecution and is currently detained by Respondents at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York. He entered the United States without inspection on September 14, 2022 and was briefly detained before Customs and Border Protection (“CBP”) released him on parole. Following his release, C.H.G. timely filed an application for asylum,

¹ Accompanying this petition is a motion by Petitioner to proceed by initials and to redact certain personally identifying information, including his alien registration number, complete date of birth, photograph, prior home addresses, and phone number in accompanying documents.

withholding of removal, and protection under the Convention Against Torture (“CAT”) based on political persecution [REDACTED]

[REDACTED] in Venezuela. He was granted work authorization based on his pending asylum application. C.H.G. complied with all conditions of his release until he was abruptly re-detained by Immigration and Customs Enforcement (“ICE”) at a November 26, 2025 check-in appointment at 26 Federal Plaza in New York, New York. C.H.G.’s re-detention in the absence of any individualized consideration, changed circumstances, or notice and an opportunity to respond, violates due process. C.H.G.’s detention is further unlawful as it results from a misclassification by the Department of Homeland Security (“DHS”) and the Executive Office for Immigration Review (“EOIR”), which have erroneously determined that C.H.G. is subject to mandatory detention based on a departure from decades of agency practice and an incorrect interpretation of the applicable statutes and regulations in the Immigration and Nationality Act (“INA”).

2. Accordingly, C.H.G. seeks a writ of habeas corpus ordering that he be released from detention immediately based on his re-detention without due process and without a lawful basis.

JURISDICTION

3. C.H.G. is in the physical custody of Respondents. C.H.G. is detained by ICE at MDC in Brooklyn, New York.

4. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

5. This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2243, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

6. 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 Eastern District of New York, the judicial district in which C.H.G. currently is detained.

7. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

9. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within

the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal quotation marks omitted).

PARTIES

10. Petitioner C.H.G. is a citizen of Venezuela who has been detained by ICE since November 26, 2025. Decl. of Miriam Mars (“Mars Decl.”) ¶¶ 1-2, 9. He is currently held at the MDC in Brooklyn, New York. *Id.* ¶ 1. He has lived in the United States since September 2022 and, before his detention, was residing in New York City with two of his daughters and their spouses. *Id.* ¶¶ 4-5.

11. Respondent Kenneth Genalo is the Director of the New York Field Office of ICE’s Enforcement and Removal Operations Division. As such, he is C.H.G.’s immediate custodian and is responsible for C.H.G.’s detention and removal. He is sued in his official capacity.

12. Respondent Raul Maldonado Jr. is employed by the Bureau of Prisons as Warden of the MDC, where C.H.G. is detained. He has immediate physical custody of C.H.G. He is sued in his official capacity.

13. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is responsible for DHS’s implementation and enforcement of the INA and oversees ICE, which is responsible for C.H.G.’s detention. Secretary Mullin has ultimate custodial authority over C.H.G. and is sued in his official capacity.

14. Respondent Todd Blance is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which EOIR, and the

immigration court system it operates, is a component agency. He is sued in her official capacity.

15. Respondent Daren K. Margolin is the Director of EOIR. He is responsible for ensuring the implementation and adherence to the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

FACTS

16. C.H.G. is a 59-year-old man who has resided in the United States since September 14, 2022. Mars Decl. ¶¶ 2, 4; Ex. A (Notice to Appear).² Prior to arriving in the United States, he lived in Colombia and Venezuela. Mars Decl. ¶¶ 2-3.

17. C.H.G. was born in 1966, in Caracas, Venezuela. *Id.* ¶ 2. He has five children, and he lived with two of his daughters in the Bronx, NY for over three years prior to his re-detention. *Id.* ¶¶ 2, 5.

18. C.H.G. fled Venezuela because he feared political persecution. He experienced repeated threats



 were disappeared, imprisoned, or killed by the government. *Id.* ¶ 2.

19. On September 14, 2022, C.H.G. entered the United States without inspection. *Id.* ¶ 4. He was processed by DHS and detained for several days. *Id.*

² Exhibit references in this petition refer to exhibits attached to the Declaration of Miriam Mars.

20. At that time, DHS determined that C.H.G. should be released on parole. *Id.*; Ex. B (Form I-94). He was not detained, reflecting DHS's assessment that he posed neither a flight risk nor a danger to the community. Immigration officials instructed him to report to an ICE check-in appointment on November 8, 2022 at 26 Federal Plaza in New York, New York. Mars Decl. ¶ 4.

21. Following his release, C.H.G. settled in the Bronx, New York with two of his daughters and their spouses. *Id.* ¶ 5. C.H.G. has fully complied with the terms of his release. *Id.* He attended his November 8, 2022 ICE check-in appointment as required. *Id.*

22. C.H.G. filed a timely application for asylum and related fear-based relief *pro se* within one year of entering the United States. He also applied for and obtained an Employment Authorization Document ("EAD") based on his pending asylum application. *Id.* ¶ 6; Ex. C (Approval Notice for EAD Application).

23. In November 2025, C.H.G. received a notice from ICE asking him to report to a check-in appointment at 26 Federal Plaza on November 26. *Id.* ¶ 8. This was his first check-in since his November 2022 appointment.

24. C.H.G. reported for the November 26, 2025 ICE check-in with his son-in-law, who also had an appointment scheduled for that day. *Id.* ¶¶ 8-9. At the check-in, ICE abruptly detained C.H.G. and his son-in-law. *Id.* ¶ 9.³ The officer who

³ C.H.G.'s son-in-law filed a habeas petition in this District challenging his detention and was immediately released from ICE custody following a March 14, 2026 order from Judge Morrison granting his petition because he was erroneously subjected to mandatory detention under 8 U.S.C. § 1225(b) and deprived of due

detained C.H.G. gave him no explanation for his sudden detention beyond “the laws have changed.” *Id.*

25. C.H.G. is neither a flight risk nor a danger to the community, and there is no indication that ICE made any such individualized determination. He has lived in New York with his family for more than three years and has never been arrested or convicted of any crime. *Id.* ¶¶ 5, 7.

26. C.H.G. was served a Notice to Appear (“NTA”) with a December 10, 2025 court date at the Varick Street Immigration Court in New York, New York, charging him as a noncitizen “present in the United States who has not been admitted or paroled.” *Id.* ¶ 9; Ex. A (Notice to Appear).

27. Following his abrupt and unexpected ICE arrest, C.H.G. was transferred to MDC in Brooklyn, New York, where he remains at this time. Mars Decl. ¶ 10. His current incarceration by ICE is dangerous, demoralizing, and takes a great toll on his physical and mental well-being. *Id.* ¶ 21.

28. C.H.G. is actively pursuing asylum and related fear-based relief in removal proceedings based on his fear of persecution in Venezuela. He filed an amended asylum application with the assistance of counsel at the Legal Aid Society on January 21, 2026. *Id.* ¶ 14.

process prior to his detention. *See Rojas Vera v. Noem*, No. 26-CV-1454, 2026 WL 712889 (E.D.N.Y. Mar. 14, 2026).

29. On January 22, 2026, DHS filed a motion to pretermitt C.H.G.'s asylum application based on the U.S. government's Asylum Cooperative Agreement ("ACA") with Ecuador. *Id.*

30. C.H.G.'s counsel filed an opposition to the motion on February 1, 2026, and C.H.G. testified at a special master calendar hearing in immigration court on February 27, 2026 regarding his fear of removal to Ecuador. *Id.* ¶¶ 16-17.

31. The immigration judge ("IJ") granted DHS's motion to pretermitt over C.H.G.'s objection and ordered C.H.G. removed to Ecuador, a country to which he fears removal. *Id.* ¶ 17.

32. C.H.G. filed a timely notice of appeal of the IJ's decision with the Board of Immigration Appeals ("BIA") on March 27, 2026, rendering the IJ's removal order non-final. *Id.* ¶ 18. His appeal remains pending before the BIA.

33. If C.H.G. remains detained, his appeal to the BIA may take at least four to six months. *Id.* ¶ 20. After the BIA issues a decision, he may remain detained for months or years more, as the BIA could remand proceedings to the IJ, or C.H.G. could file a petition for review with the U.S. Court of Appeals for the Second Circuit and seek a stay of removal. *Id.*

34. ICE unlawfully re-detained C.H.G. and continues to hold him without an opportunity to post bond or be released on other conditions. As set forth below, pursuant to the BIA's precedential decision in *Matter of Yajure Hurtado*, the IJ is unable to consider C.H.G.'s bond request, despite the agency's erroneous interpretation of the INA. *Id.* ¶ 19.

35. As a result, C.H.G. remains detained without individualized review for more than four months. Without relief from this Court, he faces many more months, and potentially years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

I. Respondents' Detention of C.H.G. Without Notice and a Pre-Deprivation Individualized Hearing Violates Due Process.

36. Respondents' abrupt detention of C.H.G. without notice and a pre-deprivation individualized hearing violates his procedural due process rights. The Fifth Amendment's Due Process Clause prevents Respondents from depriving "any person" of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Courts in this District and other districts in the Second Circuit have routinely recognized that noncitizens at risk of civil detention have a constitutionally protected interest in their continued liberty and in due process prior to detention. *See, e.g., Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *8 (E.D.N.Y. Dec. 8, 2025) (detention of noncitizen at ICE check-in without notice or opportunity to be heard violated due process); *Y-C- v. Genalo*, No. 25-cv-06558 (NCM), 2025 WL 3653496, at *7 (E.D.N.Y. Dec. 17, 2025) (same); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (same); *O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 402-05 (E.D.N.Y. 2025) (immigration courthouse detention of noncitizen without notice or opportunity to be heard violated due process); *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 498 (E.D.N.Y. 2025) (same); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 496 (S.D.N.Y. 2025) (same); *Chipantiza-Sisalema*, No.

25 Civ. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. June 18, 2025) (same); *R.A.R.R. v. Almodovar*, No. 25-CV-6597 (PKC), 2026 WL 323040, at *5 (E.D.N.Y. Feb. 6, 2026) (detention of noncitizen en route to work without notice or opportunity to be heard violated due process); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 319 (E.D.N.Y. 2025) (detention of noncitizen following credible fear interview, which took place more than four years after her entry, without notice or opportunity to be heard violated due process).

A. C.H.G. has a protected liberty interest in release from physical restraint.

37. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The government cannot infringe upon a person’s liberty without “adequate procedural protections.” *Id.* at 690-91.

38. Courts in the Second Circuit have recognized that noncitizens facing civil detention share this constitutionally protected interest in their continued liberty. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (“[T]he private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment.”); *O.F.B.*, 810 F. Supp. 3d at 402-03 (“Particularly relevant here, ‘the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee,’ therefore it ‘must be seen as within the protection of

the [Due Process Clause].” (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972))); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. May 2, 2025) (“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.”).

39. The record confirms C.H.G.’s protected liberty interest. C.H.G. has lived in the United States for over three years after entering the country in September 2022. Mars Decl. ¶ 4. He settled in New York with his daughters and their spouses. *Id.* ¶ 5. He applied for asylum and was granted work authorization. *Id.* ¶ 6; Ex. C (Approval Notice for EAD Application). He complies with all government requirements, including appearing for an ICE appointment on November 26, 2025, where he was unexpectedly detained. Mars Decl. ¶¶ 5-9. C.H.G. has now been detained at MDC for over four months.

40. Accordingly, C.H.G. has a protectable liberty interest in remaining free from detention.

B. C.H.G. is entitled to pre-deprivation notice and an opportunity to be heard.

41. Although civil immigration detention is authorized by statute, the detention may only serve two legitimate purposes: mitigating flight risk or preventing danger to the community. *Zadvydas*, 533 U.S. at 690-91; *Velasco Lopez*, 978 F.3d at 854.

42. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. See *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S.

319 (1976)); *see also J.U.*, 805 F. Supp. 3d at 497-98 (applying *Mathews* factors); *Ye*, 2025 WL 3521298, at *7-8 (same).

43. As set forth in *Mathews*, a court must consider three factors to determine what procedural protections the Constitution requires: (i) “the private interest that will be affected by the official action”; (ii) “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 (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335.

44. As to the first factor, C.H.G. “invokes ‘the most significant liberty interest there is—the interest in being free from imprisonment.’” *J.U.*, 805 F. Supp. 3d at 497 (quoting *Velasco Lopez*, 978 F.3d at 851). This is because “[f]reedom from imprisonment . . . lies at the heart of the liberty” the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

45. With respect to the second factor, the complete absence of an individualized custody determination prior to C.H.G.’s detention, combined with the fact that there was no change in circumstances since his release on parole, demonstrates that the risk of erroneous deprivation of liberty is high. *See J.U.*, 805 F. Supp. 3d at 497-98; *Artiga*, 2025 WL 2829434, at *9 (“With respect to the second prong of the *Mathews* test, the record demonstrates that no individualized determination was made prior to or contemporaneously with the decision to detain Petitioner in September 2025, and there was no change in circumstances between the

time DHS released Petitioner on bond to his re-arrest and detention.”). Respondents determined that C.H.G. posed neither a danger to the community nor a flight risk when they released him on parole in 2022. Mars Decl. ¶ 4; Ex. B (Form I-94). Since then, C.H.G. has forged stronger community ties, applied for asylum, and attended multiple ICE check-ins as required. Mars Decl. ¶¶ 5-8. He has no criminal history. *Id.* ¶ 7. Moreover, under Respondents’ new and incorrect interpretation of the INA, C.H.G. has no access to a bond hearing to challenge his abrupt re-detention. *See infra* Part II. Thus, “[t]he risk that Petitioner’s liberty was erroneously deprived under the process afforded to him is unacceptably high.” *R.A.R.R.*, 2026 WL 323040, at *4.

46. Third and finally, any government interest in C.H.G.’s continued detention is low, as Respondents previously determined that he should be released and there has been no change in circumstances to justify altering that conclusion. *See id.* at *5. Respondents’ interest in civil detention of noncitizens like C.H.G. is legitimate only insofar as it prevents danger to the community or mitigates flight risk. *Zadvydas*, 533 U.S. at 690-91; *Velasco Lopez*, 978 F.3d at 854. C.H.G. has no criminal history and was detained by Respondents while complying with the requirements of his release by attending an ICE check-in appointment. Mars Decl. ¶ 9. As such, “there is no indication . . . that detaining [Petitioner] without a pre-deprivation hearing would further those interests, because without one, there is no basis to conclude that he falls into either category.” *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 493 (E.D.N.Y. Oct. 6, 2025).

47. “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.” *Valdez*, 803 F. Supp. 3d at 219. Respondents’ detention of C.H.G. without notice and a pre-deprivation individualized hearing therefore violates his right to procedural due process.

II. Respondents’ Mandatory Detention of C.H.G. Without Individualized Review or the Opportunity for a Bond Hearing Violates the INA.

48. In addition to the due process violation, Respondents’ mandatory detention of C.H.G. pursuant to 8 U.S.C. § 1225(b) violates the INA. Despite the resounding weight of authority disagreeing and decades of contrary prior practice, Respondents claim that noncitizens like C.H.G. are subject to mandatory detention pursuant to § 1225(b) and therefore ineligible for a bond hearing before an immigration judge. But the mandatory detention provision of § 1225(b)(2)(A) does not apply to noncitizens like C.H.G. who have already entered and are residing in the United States at the time they are detained by ICE. The applicable statute of detention is § 1226(a), and Respondents’ mandatory detention of C.H.G. violates the INA.⁴

⁴ Courts in the Second Circuit have found due process violations in cases like C.H.G.’s irrespective of the applicable detention provision under the INA. *See, e.g., O.F.B.*, 810 F. Supp. 3d at 403 (“[E]ven if the Court ignored the problems with the government’s statutory interpretation, or the hundreds of district court decisions that have confronted this issue, and instead followed the minority view (which is exactly what the government asks here), the result would be the same—Petitioner’s arrest and detention do not comport with due process.”); *Savane v. Francis*, 801 F.

49. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings: First, § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* § 1229a. Individuals detained pursuant to § 1226(a) 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). Second, the INA provides for mandatory detention of arriving noncitizens subject to expedited removal under § 1225(b)(1), and for other recent arrivals seeking admission to the country under § 1225(b)(2). Finally, the INA provides for detention of noncitizens who have been ordered removed under §§ 1231(a)-(b).

50. The provisions at issue in this case are §§ 1226(a) and 1225(b)(2). These provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C. §§ 302-303, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Following the enactment of IIRIRA, EOIR drafted new regulations explaining that, generally, the detention authority for noncitizens who entered the country without inspection was § 1226, not § 1225. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323

Supp. 3d 483, 485 (S.D.N.Y. 2025) (“The Court need not resolve the threshold statutory interpretation question in this case. . . . Because the lack of any process here does not comport with the Fifth Amendment, regardless of which statutory provision authorizes Petitioner’s detention, Mr. Savane’s petition is GRANTED.”).

(Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection and placed in removal proceedings received bond hearings pursuant to § 1226(a), unless their criminal history rendered them ineligible pursuant to § 1226(c).

51. When a noncitizen is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *Lopez Benitez*, 795 F. Supp. 3d at 493 (citing 8 C.F.R. § 1236.1(c)(8); § 236.1(c)(8)). If the noncitizen objects to the initial determination, they “may appeal said decision before an immigration judge[.]” *Id.* (citing 8 C.F.R. §§ 1003.19(d)-(e)).

52. On July 8, 2025, ICE announced a new policy rejecting this well-established understanding of the statutory framework. The new policy, titled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”⁵ claimed that all noncitizens who entered the United States without inspection were subject to mandatory detention under § 1225(b) and therefore ineligible for bond hearings. The Board of Immigration Appeals (“BIA”) adopted the same position three months later in a published decision. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025), *vacated by Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026), *vacatur stayed pending appeal*, No. 26-1044 (9th Cir. Mar. 6, 2026), ECF No. 5.

53. Hundreds of federal courts, including many in the Second Circuit, have since rejected Respondents’ new interpretation of the INA’s detention authorities.

⁵ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

See, e.g., *J.U.*, 805 F. Supp. 3d at 496; *Ye*, 2025 WL 3521298, at *6; *O.F.B.*, 810 F. Supp. 3d at 402; *Lopez Benitez*, 795 F. Supp. 3d at 491; *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *5 (S.D.N.Y. Oct. 28, 2025); *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 n.22 (S.D.N.Y. 2025) (collecting cases).⁶

54. Courts have soundly rejected DHS's and EOIR's new interpretation because it defies the plain text and statutory framework of the INA. Section 1226 provides the "default rule" for arresting and detaining noncitizens who are present in the United and whom the government seeks to remove. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *J.U.*, 805 F. Supp. 3d at 491; 8 U.S.C. § 1226(a). Section 1225(b), by contrast, applies to people arriving at ports of entry or who are apprehended while arriving near the border. The statute's entire framework is premised on inspections

⁶ But see *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026) (agreeing with Respondents' new interpretation); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (same); *Saamishvili v. Flanagan*, No. 25-cv-6178 (BMC), 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (same). These nonbinding decisions are "distinct outliers" among the hundreds of decisions by district courts within the Second Circuit and across the country rejecting Respondents' position. *Molina Lara v. Genalo*, No. 2:26-CV-1424 (PKC), 2026 WL 764539, at *2 & n.6 (E.D.N.Y. Mar. 18, 2026) ("By a recent count, the central issue in this case—the administration's new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed—has been challenged in at least 362 cases in federal district courts. The challengers have prevailed . . . 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*, 811 F. Supp. 3d at 494)). A recent decision in the Eastern District explained the limitations of the reasoning in *Buenrostro-Mendez* and *Saamishvili*, finding both decisions unpersuasive. See *Acuapan v. Bondi*, No. 26-CV-00384 (OEM), 2026 WL 507889, at *4 (E.D.N.Y. Feb. 24, 2026); see also *Villanueva Hernandez v. Mullin*, No. 26-CV-1822, 2026 WL 891623, at *2 (E.D.N.Y. Apr. 1, 2026) (maintaining that, per the court's reasoning in *Acuapan*, *Saamishvili* is still unpersuasive, as are both the Fifth and Eight Circuits' decisions in *Buenrostro-Mendez* and *Avila*).

at the border of people who are “seeking admission” to the United States. *See* 8 U.S.C. § 1225(b)(2)(A).

55. Section 1225(b)’s “seeking admission” language, “necessarily implies some sort of present tense action.” *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D.Mass. July 24, 2025)). The plain language of § 1225 thus applies only to noncitizens currently seeking admission into the United States at the nation’s border or another port of entry. It does not apply to noncitizens “already present in the United States[.]” whose detention is governed by § 1226. *Jennings*, 583 U.S. at 303.

56. Respondents’ expansive interpretation of § 1225(b)(2)(A) would also impermissibly render superfluous part of Congress’s recent amendment to § 1226(c) in the Laken Riley Act. The Laken Riley Act created a new category of noncitizens subject to mandatory detention under § 1226(c), namely any noncitizen who both “is inadmissible under paragraph (6)(A), (6)(C), or (7) of [8 U.S.C. § 1182(a)]” and “is charged with, is arrested for, is convicted of, admits having committed, or admits committing” certain crimes. Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). One of these inadmissibility grounds—8 U.S.C. § 1182(a)(6)(A)(i)—covers noncitizens “present in the United States without being admitted or paroled.” If all noncitizens present without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) regardless of criminal history, “the 2025 amendment would have no effect.” *Martinez*, 792 F. Supp. 3d at 221; *see J.U.*, 805 F. Supp. 3d at 495.

57. At the time of his sudden detention on November 26, 2025, C.H.G. had been residing in the United States for three years and was pursuing asylum. Mars Decl. ¶¶ 4, 6. He was not “seeking admission” to the United States at the time of his detention. *See* 8 U.S.C. § 1225(b)(2)(A). Moreover, the Notice to Appear issued to C.H.G. at the time of his re-detention categorized him as a noncitizen “present in the United States who has not been admitted or paroled” rather than as “arriving.” Ex. A (Notice to Appear). Yet, no individualized custody determination was made at the time of C.H.G.’s re-detention, as required under § 1226(a), as Respondents’ position is that he is subject to mandatory detention under § 1225(b).

58. C.H.G. was detained at a routine ICE check-in in New York City, three years after entering the United States. He was not seeking admission to the country at the time of his detention, and, therefore, the statute governing his detention is § 1226(a).

III. The Appropriate Remedy for Respondents’ Constitutional and Statutory Violations is Immediate Release.

59. The appropriate remedy for Respondents’ constitutional and statutory violations is immediate release, with an order that C.H.G. shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents have the burden of showing that his detention is justified based on a change of circumstances since C.H.G.’s prior release, such that he now poses a danger or flight risk that cannot be mitigated by bond or alternatives to detention. *See, e.g., O.F.B.*, 810 F. Supp. 3d at 405 (ordering immediate release and a pre-deprivation bond hearing before any future re-

detention); *Hyppolite*, 808 F. Supp. 3d at 495 (same); *Ye*, 2025 WL 3521298, at *9 (same); *R-A-R-R-*, 2026 WL 323040, at *8 (same). “[T]he nature of the constitutional violation Petitioner sustained—*i.e.*, the government's failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond—renders any post-deprivation review by an immigration judge inadequate.” *O.F.B.*, 810 F. Supp. 3d at 405. Because C.H.G.’s detention was “unlawful at its inception,” only immediate release can cure Respondents’ constitutional and statutory violations. *Hernández Lazo v. Noem*, No. 2:25-cv-6639 (NJC), 2026 WL 303430, at *16 (E.D.N.Y. Feb. 4, 2026).

CLAIMS FOR RELIEF

COUNT I:

Violation of Procedural Due Process

60. C.H.G. realleges and incorporates by reference the paragraphs above.

61. 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 Fifth Amendment’s Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

62. Under a *Mathews v. Eldridge* analysis, at minimum, Respondents were required to provide individualized consideration and notice, with a showing of changed circumstances, and opportunity to respond at a hearing before a neutral decisionmaker before incarcerating C.H.G. in ICE detention. *See, e.g.*, *Ye*, 2025 WL

3521298, at *8-9 (finding due process violation where petitioner who was previously released on his own recognizance was later re-detained without notice, changed circumstances, or an opportunity to respond).

63. Respondents violated C.H.G.'s Fifth Amendment due process rights by detaining him without providing adequate procedural protections prior to detention to ensure that the detention served a valid governmental purpose. *See Hyppolite*, 808 F. Supp. 3d at 493.

64. The Court should find that C.H.G.'s detention absent individualized consideration and notice, with a showing of changed circumstances, and an opportunity to respond at a pre-deprivation hearing before a neutral decisionmaker violates the Fifth Amendment's Due Process Clause, and it should therefore order immediate release.

**COUNT II:
Violation of the INA**

65. C.H.G. realleges and incorporates by reference the paragraphs above.

66. Contrary to Respondents' current interpretation of the INA, the mandatory detention provisions in 8 U.S.C. § 1225(b) do not apply to noncitizens like C.H.G., who were neither in expedited removal proceedings, *see* § 1225(b)(1), nor seeking admission to the United States at the time of their detention, *see* § 1225(b)(2)(A). At the time of his re-detention, C.H.G. was already present in the country awaiting the adjudication of his application for asylum, withholding of removal, and CAT protection in removal proceedings under § 1229a.

67. Because C.H.G. was already residing in the United States and had established connections here while awaiting resolution of his removal proceedings at the time of his detention, the only available statutory authority for his detention was § 1226(a).

68. Because Respondents failed to conduct an initial custody determination as required by § 1226(a), C.H.G.'s detention was unlawful at its inception, and he is therefore entitled to immediate release.

PRAYER FOR RELIEF

69. For these reasons, C.H.G. requests that this Court grant the following relief:

- a. Order that C.H.G. shall not be transferred outside the Eastern District of New York while this habeas petition is pending;
- b. Order Respondents to show cause why this petition should not be granted within three days;
- c. Issue a writ of habeas corpus requiring that Respondents release C.H.G. immediately and not re-detain him absent notice and a pre-deprivation hearing before a neutral decisionmaker at which the government bears the burden of proof by clear and convincing evidence that re-detention is warranted based on a change in relevant circumstances establishing risk of danger or flight that cannot be mitigated by bond or alternatives to detention;

- d. Award C.H.G. attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

Dated: April 13, 2026

Respectfully submitted,

/s/ Diana Yanguas Rosen

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of C.H.G. because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 13, 2026

Respectfully submitted,

/s/ Diana Yanguas Rosen

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