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

PABLO HERMOGENES FLORES GARCIA,

Petitioner,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT, in their official capacity; **MDC BROOKLYN**, in their official capacity; **MARKWAYNE MULLIN**, Secretary, U.S. Department of Homeland Security, in his official capacity; **TODD BLANCHE**, Acting U.S. Attorney General of the U.S. Department of Justice, in his official capacity; **DAREN MARGOLIN**, EOIR Director, U.S. Department of Justice, in his official capacity.

Respondents.

Civil Action No.:

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PABLO HERMOGENES FLORES GARCIA ("Petitioner"), bring forth this Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Petition") pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1651; the Immigration and Nationality Act ("INA") and regulations thereunder; the Administrative Procedure Act ("APA"), 5 U.S.C §§ 702, 704, and 706, Article I, Section 9, Clause 2 of the United States Constitution ("Suspension Clause") and the Fifth Amendment right to substantive and procedural due process. Petitioner hereby requests that an immediate hearing be set on this urgent matter, further requests that he be released from detention. In support of such, Petitioner states as follows:

PRELIMINARY STATEMENT

1. Petitioner is currently in the physical custody of the Respondents at MDC Brooklyn and faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded Petitioner is subject to mandatory detention.
2. This habeas petition challenges the process employed by the above captioned Respondents in the efforts to remove Petitioner from the United States and cut short his effort to explore lawful processes available to remedy his immigration status.
3. Petitioner respectfully requests that this Court assume jurisdiction over this matter, order a stay of any attempt to deport the Petitioner from the United States during the pendency of these proceedings, and compel all above captioned Respondents to immediately release him on his own recognizance, pending the adjudication of his I-589 Application for Asylum ("Asylum"), as well as pending the exploration of all other immigration remedies available to him.

4. Petitioner is charged with having entered the United States at or near San Ysidro, California on or about December 19, 2022, without admission or parole after inspection by an immigration officer. Upon his entry, Petitioner was detained by Respondents and thereafter paroled and released on December 20, 2022 pursuant to INA § 212(d)(5).
5. DHS commenced removal proceedings against the Petitioner on or about April 13, 2026. On the same date thereof, Petitioner appeared for a check-in with ICE at 26 Federal Plaza, at which time he was detained and transferred to Delaney Hall Detention Facility located at 451 Doremus Ave, Newark, NJ 07105. Petitioner was then transferred to MDC Brooklyn located at 29th Street. Brooklyn, NY 11232, where he remains to date.
6. Petitioner's detention should be reviewed under 8 U.S.C. § 1226, and he should be deemed eligible for a bond hearing and for release on a bond that is reasonably calculated to ensure his attendance at all future U.S. immigration court hearings.
7. To vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order that Petitioner be immediately released from ICE custody. In the alternative, Respondents should be ordered to provide him with a fair bond hearing within three (3) calendar days.
8. Absent an order from this Court, Petitioner will remain detained in violation of his Constitutional due process rights.

JURISDICTION

9. Petitioner is in the physical custody of Respondents and is currently detained at the MDC Brooklyn.
10. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act,

28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C § §§ 702, 704, and 706; and for relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS's conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. The jurisdiction-channeling provisions under 8 U.S.C. § 1252 do not foreclose this Court's jurisdiction over Petitioner's claims. See *Reno v. Am.-Arab Anti- Discrimination Comm.*, 525 U.S. 471, 482 (1999) (holding that § 1252(g), reaches only "three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders." (internal quotation marks omitted)).

13. If 8 U.S.C. § 1252 did strip jurisdiction from this case, that statute would be unconstitutional as applied to Petitioner. The Suspension Clause of the U.S. Constitution states, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. This protects the right to the writ of habeas corpus where no adequate or effective alternative remedy exists. See *Boumediene v. Bush*, 553 U.S. 723 (2008).

14. Therefore, this court may properly exercise jurisdiction over all of Petitioner's claims.

VENUE

15. 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.

PARTIES

16. Petitioner **PABLO HERMOGENES FLORES GARCIA** is alleged to be a citizen and national of Nicaragua. Petitioner is in the custody of, and under the direct control, of Respondents and their agents; Petitioner is currently under threat of imminent harm and restraint of his liberty while in the custody of the Respondents.

17. Respondent **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT** ("ICE") is the component agency responsible for Petitioner's detention/custody. Respondent ICE is the legal custodian of the Petitioner, and is being sued in their official capacity.

18. Petitioner is in the physical custody of the Respondent **MDC BROOKLYN**, who is being sued in their official capacity.

19. Respondent **MARKWAYNE MULLIN** ("Respondent Mullin") is the Secretary of the **U.S. DEPARTMENT OF HOMELAND SECURITY** ("DHS"), the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. Respondent Mullin and DHS are responsible for Petitioner's detention, have the ultimate authority over the Petitioner, and are being sued in their official capacity.

20. Respondent **TODD BLANCHE** ("Respondent Blanche") is the Acting U.S. Attorney General of the U.S. Department of Justice, of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. Respondent Blanche is being sued in his official capacity.

21. Respondent **DAREN MARGOLIN** ("Respondent Margolin") is the EOIR Director of the U.S. Department of Justice. EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

REQUIREMENTS UNDER 28 U.S.C. § 2243

22. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents forthwith, unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

23. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

EXHAUSTION OF REMEDIES

24. Petitioner's claims of receiving a constitutionally inadequate process to justify the intrusions into his liberty interests are not subject to any statutory requirement of administrative exhaustion. See *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Araujo-Cortes v. Shanahan*, 35 F.Supp. 3d 533, 538 (S.D.N.Y. 2014).

25. To the extent that prudential concerns lead the Court to require exhaustion as a discretionary matter, administrative remedies available have been exhausted.

26. Moreover, neither the Immigration Judge nor the BIA, as administrative agencies, can rule on the constitutional nature of Petitioner's due process and procedural claims. Nor would the claims Petitioner has brought forth in the herein Petition be properly decided before either administrative body.

27. Finally, Petitioner is threatened with irreparable harm in his ability to pursue his constitutional claims, such that exhaustion of administrative remedies should not be required.

STATEMENT OF FACTS

28. Upon information and belief, the Petitioner sets forth the following facts.

29. Petitioner is charged with having entered the United States at or near San Ysidro, California on or about December 19, 2022, without admission or parole after inspection by an immigration officer. Upon his entry, Petitioner was detained by Respondents for a short duration, and thereafter paroled and released on December 20, 2022 pursuant to INA § 212(d)(5).

30. On or about November 24, 2023, Petitioner filed his Asylum application with U.S. Citizenship and Immigration Services ("USCIS"), which remains pending to date.

31. Recently, on or about April 13, 2026, DHS commenced removal proceedings against the Petitioner. On the same date thereof, Petitioner appeared for a check-in with ICE at 26 Federal Plaza, at which time he was detained and transferred to Delaney Hall Detention Facility located at 451 Doremus Ave, Newark, NJ 07105.

32. On or about April 15, 2026, Petitioner was then transferred to MDC Brooklyn located at 29th Street. Brooklyn, NY 11232, where he remains to date.

33. Following Petitioner's arrest and transfer to his most current detention facility, MDC Brooklyn, ICE issued a baseless custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

34. Without relief from this court, he faces the prospect of continuous months, or even years, in immigration custody.

LEGAL FRAMEWORK

35. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Forms of Detention for Noncitizens in Removal Proceedings

36. The Immigration and Nationality Act 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. *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).

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 INA § 1226(a).

41. 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(a) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

42. Following the enactment of the 1996 IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection 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).

43. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 immigration judge 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)).

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

45. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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.

46. More recently on April 28, 2026, in the matter of Cunha v. Freden, No. 25-3141 (2d Cir. Apr. 28, 2026), the Second Circuit held that § 1225(b)(2)(A) does not apply to immigrants who were long-term residents of the United States arrested in the interior, including those who have entered without inspection. Furthermore, it was held that such individuals were bond eligible.

47. As a result, section 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]."

48. 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.

49. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner.

Asylum Provisions

50. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

51. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a

legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

52. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

53. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

54. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

55. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

56. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

57. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due

process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

58. In 1996, Congress created "expedited removal" as a truncated method for rapidly removing certain noncitizens from the United States with very few procedural protections. 8 U.S.C. § 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

59. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). That officer must determine whether the individual has been continuously present in the United States for less than two years; is a noncitizen; and is inadmissible because he or she has engaged in certain kinds of fraud or lacks valid entry documents "at the time of…application for admission." See 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

60. Otherwise, if the officer concludes that the individual is inadmissible under an applicable ground, the officer "shall," with simply the concurrence of a supervisor, 8 C.F.R. § 235.3(b)(7), order the individual removed "without further hearing or review unless the alien indicates either an intention to apply for asylum…or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

61. Thus, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork—based only on the officer's own conclusions that the individual has not been admitted or paroled, that the individual has not adequately shown the requisite continuous physical presence, and that the individual is inadmissible on one of the two specified grounds.

62. Once a determination on inadmissibility is made, removal can occur rapidly, within twenty-four hours.

63. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

64. For those who fear return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening, to the extent it occurs, does not remotely approach the type of process and the rights available to asylum seekers receive in regular Section 240 immigration proceedings.

65. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C.§ 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

66. Expedited removal only applies to noncitizens who are inadmissible on one of two specified grounds: 8 U S.C. § 1182(a)(6)(C), which applies to those who seek to procure immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which applies to noncitizens who, "at the time of application for admission," fail to satisfy certain documentation requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other grounds, they must afford the noncitizen a full hearing before an immigration judge. See 8 C.F.R. § 235.3(b)(1), (3).

CLAIMS FOR RELIEF

AS AND FOR A FIRST CAUSE OF ACTION
Habeas Corpus (28 U.S.C. § 2241)

67. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

68. As set forth above, Respondents are holding Petitioner in federal custody, in violation of multiple federal statutes, the U.S. Constitution and Petitioner's basic human rights.

69. Accordingly, the Petitioner seeks a writ of habeas corpus compelling Respondents to immediately release him.

AS AND FOR A SECOND CAUSE OF ACTION
Violation of Immigration Nationality Act

70. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

71. 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. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

AS AND FOR A THIRD CAUSE OF ACTION
Violation of Bond Regulations

73. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

74. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323[1].

75. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration judges under 8 U.S.C. § 1226 and its implementing regulations.

76. Pursuant to the *Matter of Yajure Hurtado*, EOIR has a policy and practice of incorrectly applying § 1225(b)(2) to individual like Petitioner; the application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

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[1]https://www.govinfo.gov/content/pkg/FR-1997-03-06

77. As of April 28, 2026, the matter of Cunha v. Freden, No. 25-3141 (2d Cir. Apr. 28, 2026) re-establishes longstanding immigration policy and practice, which previously allowed for detainees such as the Petitioner to be deemed bond eligible.

AS AND FOR A FOURTH CAUSE OF ACTION
Violation of Due Process

78. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

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

80. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "It is well established that the Fifth Amendment entitles aliens to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "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, 121 S. Ct. 2491 (2001).

81. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal quotation marks omitted).

82. Courts have found that due process requires the government to bear the burden of proving, at any bond hearing, that the noncitizen is a danger, flight risk, or threat to national security. See *L.G. v. Choate*, 744 F. Supp. 3d 1172 (*D. Colo.* 2024) (ordering bond hearing for petitioner under 8 U.S.C. § 1226(a), holding that DHS must bear the burden to prove by clear and convincing evidence that petitioner was a flight risk or a danger to the community); *Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 U.S. Dist. LEXIS 220632 (D.N.M. Nov. 7,

2025) (citing *Choate*, holding that under a Mathews analysis[2], the civil immigration detainee's liberty interest outweighs the government's interest in his detention, ordering individualized bond hearing in which DHS bears the burden of proof); *Vizguerra-Ramirez v. Baltazar*, Civil Action No. 25-cv-00881-NYW, 2025 U.S. Dist. LEXIS 261067 (D. Colo. Dec. 17, 2025) (granting petitioner's prolonged detention claim, ordering immigration court to conduct burden-shifted hearing at which DHS must prove petitioner is a danger or a flight risk).[3]

83. Petitioner's private interest in his physical liberty is a substantial one, which is at a risk of erroneous deprivation since Respondents continue to refuse to give him any kind of individualized hearing at which they bear the burden of proving the necessity of detention.

84. The government's interest in ensuring Petitioner attends appointments and hearings related to removal proceedings or potential removal is not outweighed by the severe deprivation of liberty suffered by the Petitioner.

85. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. See *Salazar v. Dedos*, 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *25 (D.N.M. 2025); Cortes v. Noem, No. 1:25-cv-02677-CNS, 2025 U.S. Dist. LEXIS 181582, at *10 (D. Colo. Sep. 16, 2025).

AS AND FOR A FIFTH CAUSE OF ACTION

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[2]Under the *Mathews v. Eldridge*, the test balances "(1) the private interest affected by the official action, (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional or different procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail."

[3]*Brito v. Barr*, 415 F. Supp. 3d 258, 263 (D. Mass. 2019). In this class action challenge, the court held that placing the burden of proof on the noncitizen in bond hearings violated due process and the APA.

Violation of the Administrative Procedure Act

86. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

87. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2), requires courts to hold unlawful and set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Under this standard, an agency must articulate a rational connection between the facts found and the choices made, and it must provide an adequate explanation for its actions consistent with statutory authority. See *Judulang v. Holder*, 565 U.S. 42, 55 (2011).

88. The Department of Homeland Security and ICE acted arbitrarily and capriciously in continuing to detain Petitioner without any individualized justification and have failed to consider the totality of his immigration history. Petitioner has consistently cooperated with immigration authorities. Nothing in his record establishes that he presents a danger to the community or a flight risk.

89. Despite these facts, DHS has maintained Petitioner's detention for an extended and potentially indefinite period without providing any reasoned explanation or evidence that continued confinement serves a legitimate statutory purpose. DHS has failed to articulate why release under supervision, bond, or other alternatives would be insufficient.

90. By instituting an absolute bar to any form of custody review or discretionary release, DHS has effectively adopted a blanket detention policy that substitutes categorical rules for the individualized determinations required under the Immigration and Nationality Act.

91. DHS has not conducted any meaningful custody assessment of Petitioner, nor has it provided a rational explanation for refusing to exercise discretion in his case. DHS' failure to

consider Petitioner's lack of criminal convictions, his cooperation with authorities, his pursuit of asylum, or his eligibility for alternatives to detention constitutes arbitrary and capricious decision-making.

92. DHS's actions are inconsistent with the statutory purpose of civil immigration detention, which is limited to ensuring appearance at future proceedings and protecting public safety. Petitioner's continued confinement does not advance either purpose.

93. DHS has therefore acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. Its continued detention of Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

94. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative direct DHS to provide a constitutionally adequate and reasonable custody determination consistent with the requirements of the Administrative Procedure Act and the Immigration and Nationality Act.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

a. Assume jurisdiction over this matter and all attendant proceedings;

b. Order that Petitioner shall not be transferred outside of his current detention center, MDC Brooklyn located at 80 29th Street, Brooklyn, NY 11232, while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) where DHS bears the burden of proof within three (3) days;

e. Declare that Petitioner's detention is unlawful;

f. Declare that the process as applied to Petitioner by Respondents violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;

g. 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

h. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Dated: April 29, 2026

/s/ Mohammad Akif Saleem
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