

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

FREDY PASTRANA-BELTRAN,

Petitioner,

Civil Action No. _____

v.

ORAL ARGUMENT REQUESTED

MARKWAYNE MULLIN, in his official capacity as
Secretary of the U.S. Department of Homeland
Security;

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

KENNETH GENALO, in his official capacity as
Field Office Director of Enforcement and Removal
Operations of the New York Office of U.S.
Immigration and Customs Enforcement;

TODD BLANCHE, in his official capacity as Acting
U.S. Attorney General;and

RAUL MALDONADO, Jr., in his official capacity
as Warden of the Metropolitan Detention Center;

Respondents

**EXPEDITED HEARING
REQUESTED**

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. The U.S. Department of Homeland Security (“DHS”), through Immigration and Customs Enforcement (“ICE”), unlawfully detains Petitioner Fredy Pastrana-Beltran (“Mr. Pastrana-Beltran” or “Petitioner”) at the Metropolitan Detention Center (“MDC”), a federal incarceration facility located within this District, in flagrant violation of his statutory and constitutional rights. Respondents Markwayne Mullin, Todd Lyons, Kenneth Genalo, Todd Blanche, and Raul Maldonado, Jr. (collectively, “Respondents”) are responsible for Mr. Pastrana-Beltran’s unlawful detention. Through this Petition, Mr. Pastrana-Beltran seeks immediate release from unlawful detention—the only remedy that can adequately redress the complete absence of pre-deprivation process he has suffered.

2. Mr. Pastrana-Beltran, a 27-year-old Latino man, has resided continuously in the United States for more than eight years. He entered the United States in 2017 without inspection.

3. On December 29, 2025, ICE Enforcement and Removal Operations (“ERO”) Deportation Officers and U.S. Customs and Border Protection (“CBP”) Border Patrol Agents conduct surveillance operations in Brooklyn, New York, to locate and arrest another individual who was the subject of a warrant and whose last known address was 3100 Brighton 7th Street. *See* DHS Form I-213, attached hereto as **Exhibit 1**. At approximately 5:40 p.m., officers approached Mr. Pastrana-Beltran near the B&B Mini Market at the corner of Neptune Avenue and Brighton 4th Street—which is more than three blocks away from the target address. *See id.* After learning that Mr. Pastrana-Beltran lacked immigration documentation, officers placed him under arrest at approximately 5:50 p.m. and transported him to 26 Federal Plaza for processing.

4. Mr. Pastrana-Beltran’s detention was—and remains—unlawful for two

fundamental, independent reasons.

5. First, ICE's continued detention of Mr. Pastrana-Beltran contravenes the plain language of the Immigration and Nationality Act ("INA"). As a noncitizen physically present in the United States, Mr. Pastrana-Beltran's detention may be authorized only under 8 U.S.C. §1226 (hereinafter "Section 1226"). Critically, Section 1226(a) authorizes only discretionary detention of noncitizens present in the country, and such individuals must receive an individualized determination *before* detention regarding their potential flight risk or danger to the community. Mr. Pastrana-Beltran received no such pre-deprivation process whatsoever—no notice, no opportunity to be heard, and no individualized determination prior to his detention. Because Respondents wholly failed to provide any pre-deprivation process as required by Section 1226(a), his detention was unlawful from its inception, and the only adequate remedy is immediate release.

6. ICE maintains that any individual who entered the country without inspection falls subject to Section 1225, which mandates detention without the possibility of bond, rather than Section 1226. The Board of Immigration Appeals ("BIA") endorsed this position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Yet ICE's position lacks any foundation in law or fact. The Second Circuit has squarely and definitively rejected the Government's interpretation. *See Cunha v. Freden*, No. 25-3141, 2026 WL 1146044, **at 1, 21 (2d Cir. Apr. 28, 2026). ("[E]ven if the government's newfound interpretation of Section 1225(b)(2)(A) were plausible—and it is not—we would nonetheless reject it based on our obligation to construe these statutes in a manner that would avoid the serious constitutional questions attendant to what would be the broadest mass-detention-without-bond mandate in our Nation's history for millions of

noncitizens”). Given this binding Circuit authority, whether Mr. Pastrana-Beltran is subject to Section 1226(a)—and therefore entitled to pre-deprivation process—is no longer subject to genuine dispute. Numerous district courts across the country have likewise rejected ICE’s interpretation.¹ Section 1225 applies to noncitizens “seeking admission” to the United States, whereas Section 1226 applies to noncitizens “already in the country.” Mr. Pastrana-Beltran, having resided in the United States for more than eight years, plainly falls within the ambit of Section 1226.

¹ See, e.g., *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 489-90 (E.D.N.Y. 2025) (granting habeas petition); *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *4–8 (E.D.N.Y. Oct. 5, 2025) (granting habeas petition); *J.U. v. Maldonado*, 805 F. Supp. 3d 483, 490-96 (E.D.N.Y. 2025) (granting habeas petition); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (granting habeas petition); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 483–92 (S.D.N.Y. 2025) (granting habeas petition); *B.D.V.S. v. Forestal*, No. 25-cv-01968, 2025 WL 2855743, at *2 (S.D. Ind. Oct. 8, 2025) (granting habeas petition); *Eliseo A.A. v. Olson*, 811 F. Supp. 3d 1021, 1026-29 (D. Minn. 2025) (granting habeas petition); *Torres v. Wamsley*, 807 F. Supp. 3d 1266, 1270-71 (W.D. Wash. 2025) (granting preliminary injunction); *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1195-98 (W.D. Wash. 2025) (granting habeas petition); *Cordero Pelico v. Kaiser*, No. 25-cv-07286, 2025 WL 2822876, at *7–15 (N.D. Cal. Oct. 3, 2025) (granting preliminary injunction); *Echevarria v. Bondi*, No. 25-cv-03252, 2025 WL 2821282, at *4–10 (D. Ariz. Oct. 3, 2025) (granting preliminary injunction); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *2–3 (D. Mass. Oct. 3, 2025) (granting habeas petition); *Guerrero Orellana v. Moniz*, 802 F. Supp. 3d 297, 305-11 (D. Mass. 2025) (granting preliminary injunction); *Ayala Casun v. Hyde*, No. 25-cv-427, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025) (granting habeas petition); *Belsai D.S. v. Bondi*, 810 F. Supp. 3d 1016, 1022-25 (D. Minn. 2025) (granting habeas petition); *Helbrum v. Williams*, No. 25-cv-00349, 2025 WL 2840273, at *4–7 (S.D. Iowa Sep. 30, 2025) (granting habeas petition in part); *Quispe-Ardiles v. Noem*, No. 25-cv-01382, 2025 WL 2783800, at *4–7 (E.D. Va. Sep. 30, 2025) (granting habeas petition); *Alves da Silva v. ICE*, 805 F. Supp. 3d 417, 421 (D.N.H. 2025) (granting habeas petition); *Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *4–6 (E.D. Va. Sep. 29, 2025) (granting habeas petition); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *4–9 (D. N.J. Sep. 26, 2025) (granting habeas petition); *Hernandez Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025) (granting preliminary injunction); *Brito Barrajas v. Noem*, No. 25-cv-322, 2025 WL 2717650, at *3–5 (S.D. Iowa Sep. 23, 2025) (granting preliminary injunction); *Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803-05 (N.D. Iowa 2025) (granting preliminary injunction); *Guerrero Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1110-18 (E.D. Cal. 2025) (granting preliminary injunction); *Sanchez Roman v. Noem*, No. 25-cv-1684, 2025 WL 2710211, at *5–7 (D. Nev. Sep. 23, 2025) (granting preliminary injunction); *Chogollo Chafra v. Scott*, 804 F. Supp. 3d 247, 258 (D. Me. 2025) (granting preliminary injunction); *Campos Leon v. Forestal*, No. 25-cv-01774, 2025 WL 2694763, at *2–3 (S.D. Ind. Sep. 22, 2025) (granting habeas petition); *Singh v. Lewis*, No. 25-cv-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sep. 22, 2025) (granting habeas petition); *Beltran Barrera v. Tindall*, No. 25-cv-541-RGJ, 2025 WL 2690565, at *2–4 (W.D. Ky. Sep. 19, 2025).

7. Second, ICE's continued detention of Mr. Pastrana-Beltran violates his Fifth Amendment right to due process. Respondents detained Mr. Pastrana-Beltran without providing any pre-deprivation process whatsoever—no notice, no hearing, and no individualized determination of flight risk or danger to the community before depriving him of his liberty. This complete failure of process cannot be remedied by a post-hoc bond hearing; rather, immediate release is the only remedy that can adequately address this constitutional violation.

8. Mr. Pastrana-Beltran has suffered—and continues to suffer—irreparable harm because the Government has unlawfully deprived him of his liberty in direct contravention of the Fifth Amendment's core protections. As the Supreme Court recognized, “[i]n our society liberty is the norm, and detention . . . is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

JURISDICTION & VENUE

9. “Federal courts have jurisdiction to review habeas petitions filed by immigration detainees who assert that they are ‘in custody in violation of the Constitution or laws or treaties of the United States.’” *J.U.*, 805 F. Supp. 3d at 488-89 (quoting 28 U.S.C. § 2241(c)(3)).

10. Respondents detained Mr. Pastrana-Beltran on December 29, 2025. He remains in custody at MDC.

11. This Court has subject matter jurisdiction over this Petition pursuant to U.S. Const. art. I, § 9, cl. 2 (habeas corpus); 28 U.S.C. § 2241, *et seq.* (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1651 (All Writs Act).

12. This Court has authority to grant declaratory and injunctive relief, 28 U.S.C. §§ 2201, 2202, and to issue and enforce the writ of habeas corpus, U.S. Const. art. I, § 9, cl.

2 and 28 U.S.C. § 1651.

13. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

14. Venue is proper in this District pursuant to 28 U.S.C. § 2241(d) (stating that “the application [for habeas corpus] may be filed in the district court for the district wherein such person is in custody”); 28 U.S.C. § 1391(b)(2) (stating that venue is proper in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”). Venue is proper in this District because Mr. Pastrana-Beltran is presently detained within this District and because a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this District.

15. To the extent Respondents may transfer Mr. Pastrana-Beltran outside this District, such transfer would be undertaken to defeat this Court’s jurisdiction. The Court retains authority to enjoin any such transfer and to order Mr. Pastrana-Beltran’s release. *See, e.g., Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2-3 (S.D.N.Y. June 13, 2025) (enjoining a habeas petitioner’s transfer pending adjudication of his petition); *Guarchaj v. Genalo*, No. 26-CV-00889, 2026 WL 279831, at *1 (S.D.N.Y. Feb. 2, 2026) (ordering that habeas petitioner not be transferred); *D.W. v. Almodovar*, No. 26-00760, 2026 WL 235164, at *1 (S.D.N.Y. Jan. 29, 2026) (same); *J.U.*, 805 F. Supp. 3d at 497 (granting habeas petition and ordering release); *Hyppolite*, 808 F. Supp. 3d at 495 (granting habeas petition and citing court’s earlier order to release petitioner).

16. A court hearing a petition for a writ of habeas corpus must issue the writ or an order to show cause to the Respondents “forthwith.” 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require the Respondents to respond “within three days

unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

PARTIES

17. Petitioner Fredy Pastrana-Beltran, a 27-year-old Latino man, has resided in the United States for more than eight years. ICE arrested and detained him without a judicial warrant on December 29, 2025. Mr. Pastrana-Beltran remains in custody at MDC in Brooklyn, New York, within this district.

18. Respondent Markwayne Mullin is named in his official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Secretary Mullin is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); he routinely transacts business in the Eastern District of New York; he supervises Respondents Lyons and Genalo; and he is legally responsible for the custody and removal of Mr. Pastrana-Beltran. Respondent Mullin’s office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

19. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); he routinely transacts business in the Eastern District of New York; he supervises Respondent Genalo; he is legally responsible for the pursuit of Mr. Pastrana-Beltran’s detention and removal; and, as such, is a legal custodian of Mr. Pastrana-Beltran. Respondent Lyons’s office is located at DHS, 500 12th Street SW, Washington, D.C. 20528.

20. Respondent Kenneth Genalo is named in his official capacity as Field Office Director of ICE-ERO’s New York office. In this capacity, Respondent Genalo is responsible for the administration of immigration laws and execution of detention and

removal determinations and, as such, is a legal custodian of Mr. Pastrana-Beltran. Respondent Genalo's office is located at 26 Federal Plaza, New York, NY 10278.

21. Respondent Todd Blanche is named in his official capacity as the Acting U.S. Attorney General. In this capacity, Attorney General Blanche is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), including immigration courts and the Board of Immigration Appeals, 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 Mr. Pastrana-Beltran's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Blanche's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

22. Respondent Raul Maldonado, Jr. is named in his official capacity as Warden of the MDC, a federal incarceration facility located within this District where Mr. Pastrana-Beltran is currently detained. In his capacity as Warden, Respondent Maldonado oversees the administration and the management of MDC and, as such, is a legal custodian of Mr. Pastrana-Beltran. His business address is 80 29th St., Brooklyn, NY 11232.

FACTS AND PROCEDURAL BACKGROUND

I. Mr. Pastrana-Beltran's Life in the United States

23. Mr. Pastrana-Beltran has resided continuously in the United States since his arrival in September 2017. Throughout his time in this country, he has never been convicted of any crime. Although authorities arrested Mr. Pastrana-Beltran on a prior occasion, the charges were dismissed. *See Exhibit 1* (I-213 excerpts).

II. ICE Unlawfully Arrests and Detains Mr. Pastrana-Beltran

24. On December 29, 2025, ICE officers arrested Mr. Pastrana-Beltran while he was with his brother in Brooklyn. *See* Form I-862 dated December 29, 2025, Notice to Appear, attached hereto as **Exhibit 2; Exhibit 1** (I-213 excerpts); Form I-200 Warrant for Arrest and Certification of Service, attached hereto as **Exhibit 3**. Following his arrest, officers transferred Mr. Pastrana-Beltran to MDC, where he remains incarcerated to this day.

25. DHS's own documentation contains significant inconsistencies that undermine the reliability of its evidence against Mr. Pastrana-Beltran. The I-213 documents for both Mr. Pastrana-Beltran and his brother who was arrested at the same time as him have nearly identical narratives attached to them, indicating that ICE merely copied word for word between each form. Mr. Pastrana-Beltran denies making the statements attributed to him in the I-213 and maintains that interrogators failed to provide him competent interpretation during questioning. Further, the documents record that the arrest occurred at 3110 Brighton 7th Street where video evidence establishes that the arrest occurred at the B&B Mini Market on Neptune Avenue and Brighton 4th Street. *See* Reply Br. in Supp. of Mot. to Suppress at 5–8, attached hereto as **Exhibit 4; Exhibit 2** (I-213 excerpts).

26. DHS issued a Notice to Appear (“NTA”) placing Mr. Pastrana-Beltran in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with, *inter alia*, inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) for allegedly being both an “applicant for admission” without valid immigration documentation and “[a]n alien present in the United States without being admitted or paroled.” *See* **Exhibit 2**. Critically, the NTA itself classifies Mr. Pastrana-Beltran as “an alien present in the United

States who has not been admitted or paroled”—not as an “arriving alien”—a designation consistent with detention authority under Section 1226, not Section 1225. *See Exhibit 2* at 1.

27. On April 30, 2026, Immigration Judge Charles Conroy conducted a hearing on removability and ruled against Mr. Pastrana-Beltran, finding the government’s evidence of alienage sufficient.

28. Conditions at MDC are dire. MDC has earned notoriety for its “barbaric,” violent, unsanitary, unsafe, and inhumane conditions, where authorities confine detainees like Mr. Pastrana-Beltran alongside criminal detainees in circumstances akin to solitary confinement. *See* Katrie Rose Quandt and Maeve Brennan, *Lockdowns, Violence, and “Barbaric Conditions” in a Federal Jail Known for its Famous Detainees*, *The Appeal* (June 30, 2025), <https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/>. Guards routinely mistreat detainees, confine them to their cells beyond authorized periods, and disregard their requests for medical attention. *See id.*

III. ICE Reinterprets the INA

29. In support of its contention that all noncitizens who entered without inspection are subject to mandatory detention, ICE has broadly invoked a novel legal theory first articulated in an internal ICE memorandum dated July 8, 2025, which the BIA subsequently endorsed in *Yajure Hurtado*. *See* Am. Immigr. Laws Ass’n, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (screen captures of July 8, 2025 ICE memo announcing interim guidance).

30. This novel and legally unsupportable policy from DHS purports to subject *all* non-citizens with long-term presence in the interior of the United States to mandatory detention. ICE's new policy and the BIA's subsequent decision in *Yajure Hurtado* represent the Government's erroneous attempt to apply § 1225(b)(2)(A) to all noncitizens, rather than to the narrow subset of noncitizens "seeking admission" to the United States. This theory lacks any foundation in law. The Second Circuit has now definitively rejected it. *See Cunha*, 2026 WL 1146044, **at 1, 21. In the period since the BIA decided *Yajure Hurtado*, an ever-increasing number of district courts across the country have explicitly rejected its holding. *See supra* n.1.

LEGAL FRAMEWORK

I. Mr. Pastrana-Beltran's Detention is Unlawful

31. Mr. Pastrana-Beltran may succeed on the merits by showing that either his statutory or constitutional rights have been violated. *See, e.g., J.U.*, 805 F. Supp. 3d at 497-98 (ruling that petitioner's detention was illegal based on both theories); *Hyppolite*, at 489-90; *Artiga*, at *4-8. As explained below, the Government has violated both Mr. Pastrana-Beltran's statutory and constitutional rights.

a. Mr. Pastrana-Beltran's detention is unlawful under the INA

32. Mr. Pastrana-Beltran's detention violates the INA because the statute governing his detention—Section 1226—requires an individualized determination before detention may continue, which Respondents have failed to provide. The INA authorizes civil immigration detention under two provisions: Section 1225 and Section 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018).

33. Section 1225(b) mandates detention of noncitizens who are "seeking admission" to the United States—that is, those presenting themselves at the border or

apprehended shortly after entry. 8 U.S.C. §1225(b)(2)(A); *Jennings*, 583 U.S. at 289.

34. Section 1226(a), by contrast, governs noncitizens already present in the country and confers only discretionary detention authority—requiring an individualized determination to assess flight risk or danger to the community before detention may continue. 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 289.

35. Mr. Pastrana-Beltran falls squarely within Section 1226’s scope. He resided in the United States for over eight years before his arrest—he was unquestionably “already present in the United States.” *Jennings*, 583 U.S. at 303. Accordingly, his detention can proceed only under Section 1226, and Respondents were required to make an individualized determination before detaining him. *See Hyppolite*, 808 F. Supp. 3d at 486 (holding that a petitioner present in the country for nearly three years was detained pursuant to Section 1226(a), not Section 1225(b)(2)). Respondents made no such determination. Mr. Pastrana-Beltran’s detention was therefore unlawful from its inception.

36. ICE has contested this conclusion, asserting that noncitizens similarly situated to Mr. Pastrana-Beltran are subject to mandatory detention pursuant to Section 1225. The Government grounds this position in a reinterpretation of the settled understanding of the INA based on a July 8, 2025, internal agency memorandum, which the BIA subsequently endorsed in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws Ass’n (July 8, 2025), <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (screen captures of ICE Memo announcing interim guidance).

37. ICE’s interpretation contravenes decades of binding precedent. The

Supreme Court has consistently distinguished between noncitizens seeking admission at the border and those already present within the United States. *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Once a noncitizen enters the country, the Due Process Clause applies regardless of whether that presence is lawful. *Zadvydas*, 533 U.S. at 693. This distinction between those “seeking admission” and those “already in the country” runs throughout immigration law. *Id.*

38. The Supreme Court reaffirmed this distinction in *Jennings*, holding that Section 1225(b) governs noncitizens “seeking admission” while Section 1226(a) governs those “already in the country.” 583 U.S. at 289. The Second Circuit recently accorded great deference to this framework. *See Cunha*, 2026 WL 1146044, at *12. Given this settled jurisprudence, this Court should view ICE’s assertion of a “previously unheralded power” to detain long-term residents under Section 1225(b)(2)(A) with skepticism. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 222 (D. Mass. 2025); *see also Cunha*, 2026 WL 1146044, at *18.

39. *Yajure Hurtado* represents a radical departure from decades of established practice—a fact the BIA itself acknowledged by admitting that immigration judges had conducted Section 1226(a) bond hearings for noncitizens who entered without inspection “for years.” 29 I. & N. Dec. at 225 n.6.

40. In the months since Respondents began broadly invoking Section 1225(b)(2)(A) to justify mandatory detention of noncitizens already residing within the United States, the Second Circuit has joined a steadily mounting number of district courts rejecting that interpretation of the INA. *See Cunha*, 2026 WL 1146044, at *2-3; *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 (S.D.N.Y. 2025) (“[T]he administration’s

new position . . . has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States.”); *Y- C- v. Genalo*, No. 25-CV-06558 (NCM), 2025 WL 3653496, at *2 (E.D.N.Y. Dec. 17, 2025) (“Within the Eastern District of New York, at least six judges have considered the issue in the last three months and have unanimously rejected the government’s interpretation.”) (collecting cases); *see also supra* n.1 (listing cases).

41. Notwithstanding these contrary decisions, Respondents persist in asserting that noncitizens like Mr. Pastrana-Beltran remain subject to mandatory detention and are ineligible for bond. *See, e.g., Archil Maisuradze v. Haynes*, No. 26-CV-1578 (LAK), 2026 WL 563437, at *1 (S.D.N.Y. Feb. 28, 2026) (respondents continued to assert that petitioner was subject to mandatory detention under Section 1225(b)(2)(A) and that “ordering a bond hearing still appears to be futile” because contrary decisions had “not stopped the BIA from directing immigration judges to continue adhering to Yajure Hurtado”); *Jovel v. Bondi*, No. 26-CV-01193 (NRM), 2026 WL 603573, at *1 (E.D.N.Y. Mar. 4, 2026) (respondents continuing to assert application of Section 1225(b)(2)(A)); *Figueroa Ocampo v. Noem*, No. 26-CV-0999 (PKC), 2026 WL 587643, at *1 (E.D.N.Y. Mar. 3, 2026) (same); *Parada Cruz v. Noem*, No. 2:26-CV-1112 (NJC), 2026 WL 555038, at *1 (E.D.N.Y. Feb. 27, 2026) (same).

42. Respondents’ position also violates the canon that every word in a statute must have meaning. Section 1225(b)(2)(A) applies to noncitizens “seeking admission”—a term Congress chose deliberately. The Second Circuit has held that “seeking admission” refers only to noncitizens presently pursuing lawful entry, not those who are merely

“applicants for admission” by statutory definition. *See Cunha*, 2026 WL 1146044, at *5-6. If mandatory detention applied to all “applicants for admission,” there would be no need for Congress to separately reference those “seeking admission.” *Hyppolite*, 808 F. Supp. 3d at 486; *Cunha*, 2026 WL 1146044, at *6. Adopting Respondents’ position would render that language mere surplusage. *Id.*

43. The statutory context further undermines Respondents’ position. Section 1225(b)(2)(A) is subject to subparagraphs establishing rules for crewmen, stowaways, and aliens arriving at land borders—all categories of individuals presenting at the border, not long-term residents. This structure confirms that “seeking admission” refers to those at the border or recently apprehended after entry, not individuals like Mr. Pastrana-Beltran who have resided here for years. *Hyppolite*, 808 F. Supp. 3d at 487.

44. ICE’s interpretation would also render multiple statutory provisions superfluous. If Section 1225(b) already mandated detention of all unadmitted noncitizens, Congress would have had no reason to enact Sections 1226(c)(1)(A), (D), and (E)—which provide for mandatory detention of specific categories of noncitizens based on criminal conduct or terrorist activities.

45. Section 1226(c)(1)(A) mandates detention of noncitizens who committed crimes of moral turpitude or controlled substance offenses. This provision would be unnecessary if all unadmitted noncitizens were already subject to mandatory detention under Section 1225(b). *Hasan v. Crawford*, 800 F. Supp. 3d 641, 656 (E.D. Va. 2025); *J.U.*, 805 F. Supp. 3d at 495.

46. Section 1226(c)(1)(D) similarly mandates detention of noncitizens engaged in terrorist activities—again, a provision rendered superfluous by ICE’s interpretation.

Hasan, 800 F. Supp. 3d at 656.

47. Most tellingly, Congress enacted Section 1226(c)(1)(E) just last year through the Laken Riley Act, which mandates detention of noncitizens charged with or convicted of certain crimes. If Section 1225(b)(2) already mandated detention of all unadmitted noncitizens regardless of criminal conduct, the Laken Riley Act's criminal conduct requirement would be pointless. *Hyppolite*, 808 F. Supp. 3d at 488; *Cunha*, 2026 WL 1146044, at *15-16. ICE's position would render this recent congressional enactment entirely superfluous. *Id.*

48. In sum, Mr. Pastrana-Beltran—who has resided in the United States for over eight years and was not “seeking admission” at the time of his arrest—is plainly detained pursuant to Section 1226(a), which requires an individualized determination before detention may continue. Respondents' contention that noncitizens similarly situated to Mr. Pastrana-Beltran are detained pursuant to Section 1225(b)(2)(A) is irreconcilable with the plain language of the statute, settled case law, and EOIR's own prior interpretations of the law. Respondents' continued detention of Mr. Pastrana-Beltran, especially without any individualized determination, violates the INA and is therefore unlawful.

49. ICE's novel interpretation of the INA contravenes binding Second Circuit precedent, an overwhelming body of contrary authority, and fundamental principles of statutory interpretation. *See Cunha*, 2026 WL 1146044, at *2-3. This Court is bound by the Second Circuit's holding and must reject ICE's position.

b. Mr. Pastrana-Beltran's detention violates the Due Process Clause of the Fifth Amendment

i. Mr. Pastrana-Beltran's detention violates his procedural due process rights

50. Respondents' detention of Mr. Pastrana-Beltran—without any individualized determination of flight risk or danger—violates the Fifth Amendment's procedural due process protections. The *Mathews v. Eldridge* balancing test, which governs procedural due process claims, strongly favors Mr. Pastrana-Beltran.

51. The Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. Courts assess procedural due process claims by weighing: (1) the private interest affected; (2) the risk of erroneous deprivation and the value of additional safeguards; and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

52. All three factors favor Mr. Pastrana-Beltran. Courts in nearly identical circumstances have found procedural due process violations where petitioners were detained without pre-deprivation bond hearings. See *Hyppolite*, 808 F. Supp. 3d at 490-94; *J.U.*, 805 F. Supp. 3d at 496-98; *Lopez Benitez*, 795 F. Supp. 3d at 491-96.

53. First, Mr. Pastrana-Beltran's liberty interest is fundamental. Freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Depriving a noncitizen of this interest requires an individualized determination of flight risk and danger to the community. *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020).

54. Second, the risk of erroneous deprivation is manifest. ICE detained Mr. Pastrana-Beltran without providing any pre-deprivation process. Courts in this jurisdiction have consistently held that when a noncitizen receives no individualized consideration before detention, the due process violation is irremediable through post-deprivation procedures—no bond hearing can cure it. See *J.U.*, 805 F. Supp. 3d at 498 ("[A] bond

determination by a DHS officer or an immigration judge would not remedy the core constitutional violation” because “ICE detained her under the wrong statute and without any notice or opportunity to be heard”); *Hyppolite*, 808 F. Supp. 3d at 494. The appropriate remedy for such a complete failure of pre-deprivation process is immediate release, not a belated bond hearing. Every day Mr. Pastrana-Beltran remains in detention is another day he is being deprived of his rights without any process whatsoever.

55. Mr. Pastrana-Beltran’s circumstances underscore this risk: he has no criminal convictions and has resided here for over eight years. He poses neither a flight risk nor a danger to the community. *See Hyppolite*, 808 F. Supp. 3d at 493 (finding “extremely high” risk of erroneous deprivation in similar circumstances).

56. Third, the government’s interests do not justify Mr. Pastrana-Beltran’s continued detention. The government’s legitimate interests—ensuring appearance at proceedings and preventing community danger—are not implicated here given Mr. Pastrana-Beltran’s eight-year residence and clean record. Moreover, separate mandatory detention provisions for noncitizens who commit crimes independently serve those interests. *See* 8 U.S.C. § 1226(c).

57. The *Mathews* factors thus establish that Mr. Pastrana-Beltran’s detention without any pre-deprivation process violates his procedural due process rights under the Fifth Amendment. Because this violation occurred at the inception of detention—before any process was provided—a post-hoc bond hearing cannot cure it. Immediate release is the only effective remedy.

ii. Mr. Pastrana-Beltran’s detention violates his substantive due process rights

58. Respondents’ detention of Mr. Pastrana-Beltran also violates substantive

due process. The Fifth Amendment's substantive component requires strict scrutiny whenever the government infringes fundamental liberty interests—and freedom from physical detention lies at the heart of the liberty the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *Hasan*, 800 F. Supp. 3d at 658.

59. Government detention violates substantive due process unless ordered in a criminal proceeding with adequate protections, or justified by special circumstances that outweigh the individual's interest in avoiding physical restraint. *Zadvydas*, 533 U.S. at 690. This protection extends to all noncitizens present in the United States. *Hasan*, 800 F. Supp. 3d at 658.

60. Respondents have advanced no special justification for Mr. Pastrana-Beltran's detention—nor could they. ICE presented no evidence that he posed a flight risk or danger to the community. This arbitrary deprivation of liberty, absent any individualized findings or statutory authority, shocks the conscience.

II. Mr. Pastrana-Beltran is Entitled to Immediate Release

61. “The typical remedy for [unlawful executive] detention is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

62. Courts considering the detention of noncitizens under similar circumstances have concluded that “a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation” because such “detention was unlawful from its inception—ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a).” *Rodriguez-Acurio*, 811 F. Supp 3d at 319. Because Mr. Pastrana-Beltran received no pre-deprivation process whatsoever before ICE deprived him of his liberty, a bond hearing now

cannot cure the constitutional violation that has already occurred. Accordingly, “disposing of the matter as law and justice require necessitates [petitioner’s] release from detention and relief guarding against her re-detention in violation of this Court’s determinations that she is not subject to mandatory detention under Section 1225(b).” *Id.* at 320 (quoting 28 U.S.C. § 2243); *see also O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 405 (E.D.N.Y. 2025) (“The government’s ongoing detention of the petitioner, in the face of this complete failure of process, entitles him to immediate release.”); *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025) (same).

63. Mr. Pastrana-Beltran is therefore entitled to immediate release from Respondents’ unlawful detention. No lesser remedy can adequately redress the complete absence of pre-deprivation process he has suffered.

III. In the Alternative, Should the Court Decline to Order Immediate Release, Mr. Pastrana-Beltran Must Be Afforded a Bond Hearing at Which the Government Bears the Burden of Establishing Dangerousness and Flight Risk by Clear and Convincing Evidence

64. Although immediate release is the only remedy that can adequately address the complete absence of pre-deprivation process in this case, (*see Crespo Tacuri v. Genalo*, No. 25-CV-06896, 2026 WL 35569, at *5, *7 (E.D.N.Y. Jan. 6, 2026); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (“[A] bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation”)), should the Court decline to grant such release, Mr. Pastrana-Beltran requests that the Court order that he be provided with an individualized bond hearing at which the Government “bear[s] the burden of demonstrating, by clear and convincing evidence, that [he] is a danger to the community and a risk of flight,” *Velasco Lopez*, No. 19-CV-2912, 2019 WL 2655806, at *4 (S.D.N.Y. May 15, 2019).

65. Both the INA and due process require that the burden be allocated in this manner.

a. Congress Did Not Intend for People Subjected to Immigration Detention to Bear the Burden of Proof in Bond Proceedings

66. Although § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of the provision demonstrates that DHS properly bears the burden of justifying a noncitizen's continued detention. If Congress intended that noncitizens carry the burden of proof in bond hearings pursuant to § 1226(a), it would have expressly said so—as it did in another subsection of § 1226. *See* § 1226(c)(2) (“The Attorney General may release [a noncitizen]” subject to mandatory detention if release is (1) “necessary to provide protection to a witness” and (2) “the [noncitizen] satisfies the Attorney General that the alien will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings”).

67. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). This is “particularly true” in instances when Congress enacts statutes “as part of a unified overhaul” of the prior law. *Id.* at 430–31. Congress enacted all of § 1226 at the same time, in 1996. *See Demore*, 538 U.S. at 521 (describing “wholesale reform” of immigration laws as including enactment of § 1226). While § 1226(a) is silent with respect to the burden of proof, § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress’s failure to expressly require noncitizens to carry the burden of proof under § 1226(a) when it overhauled the INA indicates that placing the burden on the

noncitizen contravenes congressional intent.

68. Further, maxims of statutory construction dictate that “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: in replacing 8 U.S.C. § 1252(a)(1) with § 1226(a), Congress made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Matter of Patel*, 15 I. & N. Dec. 666, 666 (B.I.A. 1976) (articulating that an immigrant “generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security . . . or that he is a poor bail risk”).

69. Former 8 U.S.C. § 1252(a)(1)² governed the detention of deportable immigrants prior to § 1226(a). Before the enactment of § 1226 and while § 1252(a)(1) was in effect, the BIA routinely held that noncitizens detained pursuant to § 1252(a) benefited from a presumption against detention during immigration proceedings. *See Patel*, 15 I. & N. Dec. at 666. The BIA maintained this presumption in several precedential decisions after *Patel*. *See, e.g., Matter of Andrade*, 19 I. & N. Dec. 488, 489 (B.I.A. 1987); *Matter of Spiliopoulos*, 16 I. & N. Dec. 561, 563 (B.I.A. 1978).

70. When Congress preserved the language of former § 1252(a)(1) in re-

² Former 8 U.S.C. § 1252(a)(1) read: “Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody or (2) be released under bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole.” Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952).

enacting it as § 1226(a), it presumably adopted the Board’s “administrative [] interpretation” of the statute and thereby *Patel*’s presumption against detention during removal proceedings. *Lorillard*, 434 U.S. at 580. Notably, both statutes are silent with respect to the burden of proof. *Compare* former § 1252(a)(1) *with* § 1226(a).

71. As such, the agency’s requirement that Mr. Pastrana-Beltran bear the burden of proof in a bond redetermination hearing pursuant to § 1226(a) is contrary to the statute.

b. Due Process Requires that Mr. Pastrana-Beltran Receive at least a Bond Hearing Where the Government Bears the Burden of Proof by Clear and Convincing Evidence

72. As demonstrated above, immediate release is the only adequate remedy for Respondents’ complete failure to provide any pre-deprivation process before detaining Mr. Pastrana-Beltran. However, should the Court decline to order immediate release, any bond hearing must satisfy constitutional requirements. When the government seeks to use its weighty power to confine a person, 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.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

73. As repeatedly recognized by courts in this circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention. In *Velasco Lopez*, the Second Circuit applied a *Mathews* analysis to conclude that due process requires placing the burden on the government in a §1226(a) bond redetermination hearing for a petitioner whose detention had become prolonged. *Id.* at 851 (citing *Mathews*, 424 U.S. at 319). Since then, courts in this circuit have consistently held that due process requires the

government to bear the burden of proof. *See, e.g., Arana v. Decker*, No. 20-CV-4104, 2020 WL 7342833, at *9 (S.D.N.Y. Dec. 14, 2020) (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months after individualized analysis guided by the framework of *Velasco Lopez*); *Guerrero v. Decker*, 19-CV-11644, 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) (“[I]n accordance with every court to have decided this issue,’ [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).” (quoting *Linares Martinez v. Decker*, No. 18-CV-6527, 2018 WL 5023946, at *5 (Oct. 17, 2018))).

74. District courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all § 1226(a) custody hearings, regardless of the length of detention. *Reyes v. King*, No. 19 CIV. 8674, 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the “‘overwhelming majority of courts’ that have found that the Due Process Clause of the Fifth Amendment requires” the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359, 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (“[N]either the Circuit’s decision in *Velasco Lopez* nor any other binding appellate authority overrules the ‘overwhelming consensus’ of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent ‘prolonged detention.’”); *Jimenez v. Decker*, No. 21-CV-880, 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government’s argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL

707062, at *3.

75. This consensus approach aligns with the Second Circuit’s analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. *Id.* at 856; see *Hernandez-Lara v. Lyons*, 10 F.4th 19, 37–38 (2d Cir. 2021). Those precedents underscore that civil detention must be carefully limited to avoid due process concerns. See, e.g., *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); see also *Salerno*, 481 U.S. at 755 (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).

76. They further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers to establish the necessity of that detention—not the person detained. See, e.g., *Salerno*, 481 U.S. at 751 (affirming legality of pretrial detention where burden of proof was on the government); see also *Foucha*, 504 U.S. at 81–82, 86 (holding unconstitutional a state civil insanity detention “statute that place[d] the burden on the detainee to prove that he is not dangerous”). That interest in liberty is strong even at the outset of detention: “[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130–31 (2010) (holding that the clear and convincing standard applies under a federal statute which permits a continued confinement of a “mentally ill, sexually dangerous” prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued

detention period). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received “the *full procedural protections* our criminal justice system offers,” *Demore*, 538 U.S. at 513; on Congress considering specific studies regarding its legislative choice, *id.* at 518–21; and on the relatively short duration of detention it anticipated, *id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

77. And those precedents finally hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear and convincing standard of proof when an individual’s liberty is at stake. *Velasco Lopez*, 978 F.3d at 856 n.15 (“When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof.” (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha*, 504 U.S. at 81. In cases in which the individual’s interest is of “such weight and gravity,” it is improper to ask an individual to “share equally with society the risk of error.” *Addington*, 441 U.S. at 427. Immigration detention implicates “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851.

c. Petitioner’s Bond Hearing Must Have Further Procedural Protections to Satisfy Due Process

78. The Due Process Clause requires that detention “bear a reasonable relation to its purpose.” *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect

community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th at 32 n.5 (same). To satisfy this requirement, a bond hearing must include additional procedural protections, specifically consideration of an individual's ability to pay and alternative conditions of release.

79. A robust consensus of district courts in this circuit agree that due process requires consideration of an individual's ability to pay and alternative conditions of release when setting a bond. *See O.F.C. v. Decker*, No. 22 CIV. 2255, 2022 WL 4448728, at *10 (S.D.N.Y. Sept. 12, 2022) ("Courts in this District overwhelmingly agree that IJs must consider these two factors—alternatives to imprisonment and ability to pay—when determining bond for a detained immigrant.") (collecting cases); *Roman v. Decker*, No. 20-CV-6752, 2020 WL 5743522, at *4 (S.D.N.Y. Sept. 25, 2020) ("Requiring that the adjudicator consider alternative conditions of release and the detainee's ability to pay in setting bond [] ensures that detention is not imposed arbitrarily."); *see also Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 317 (S.D.N.Y. 2019) (collecting cases); *Arana*, 2020 WL 7342833, at *8; *Hernandez-Aviles v. Decker*, No. 20 CIV. 7636, 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020); *Fernandez Aguirre v. Barr*, 19-CV-7048, 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019); *Hernandez v. Decker*, No. 18-CV-5026, 2018 WL 3579108, at *12 (S.D.N.Y. July 25, 2018).

80. If the noncitizen's ability to pay is not considered after they have been deemed eligible for bond, they will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez v. Sessions*, 872 F.3d 976, 992 (9th Cir. 2017) (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

81. Similarly, if the government is able to protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno*, 481 U.S. at 755 (approving a pretrial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) (“[T]he determination of whether detention was ‘necessary to serve a compelling regulatory purpose’ necessarily required the decisionmaker to consider whether ‘a less restrictive alternative to detention’ would suffice.”). Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

82. In the light of the strong interest that Mr. Pastrana-Beltran has in his liberty, the Constitution requires adequate procedural protections --- namely the consideration of his ability to pay and alternative conditions of release --- prior to depriving him of his freedom.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

83. Administrative exhaustion is not a statutory requirement, and this Court should excuse it because requiring exhaustion would prove futile. Courts in this Circuit impose administrative exhaustion only “generally” and “as a prudential matter” before a

petitioner may challenge immigration detention in federal district court. *Lopez Benitez*, 795 F. Supp. 3d at 496 (excusing administrative exhaustion and granting petition for writ of habeas corpus); *Quintanilla*, at *2 (S.D.N.Y. Feb. 22, 2021) (same); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) (“There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.”).

84. Courts in this Circuit excuse administrative exhaustion and grant habeas petitions for relief from custody when “(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.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (citations omitted). A petitioner need not demonstrate all four factors for a court to excuse administrative exhaustion. *Lopez Benitez*, 795 F. Supp. 3d at 496–98 (excusing administrative exhaustion and granting habeas relief where petitioner demonstrated factors (1) and (4)).

85. Courts have excused the exhaustion requirement in cases like Mr. Pastrana-Beltran’s where the four *Beharry* prongs are readily satisfied: (1) Mr. Pastrana-Beltran has no genuine opportunity for adequate relief based on ongoing ICE and EOIR practices; (2) he is already suffering irreparable injury through unlawful detention; (3) administrative appeal would be futile; and (4) Mr. Pastrana-Beltran has raised a substantial constitutional question concerning whether his due process rights have been violated. *See, e.g., Archil Maisuradze*, 2026 WL 563437, at *1 (noting that ordering a bond hearing “still appears to be futile” because immigration judges continue to deny such hearings after numerous

decisions rejecting Respondents' arguments); *Artiga*, 2025 WL 2829434, at *3–4; *J.U.*, 805 F. Supp. 3d at 489; *Lopez Benitez*, 795 F. Supp. 3d at 497–98; *Alvarez Puga v. Assistant Field Off. Dir.*, No. 25-cv-24535-CIV, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025). When the immigration court itself forecloses a petitioner's ability to present critical evidence, requiring further exhaustion in that forum would be futile. *See* Order of the Immigration Judge denying Respondents' Motion to Accept Video Evidence, hereto as **Exhibit 5**. Indeed, Mr. Pastrana-Beltran's own case demonstrates the futility of administrative remedies: on March 25, 2026, Immigration Judge Conroy denied Respondents' motion to accept video evidence of the arrest, thereby refusing to consider probative defense evidence in the administrative forum. Thereafter, on April 30, 2026, Immigration Judge Conroy ruled against Mr. Pastrana-Beltran on removability, finding the government's evidence of alienage sufficient.

CLAIMS FOR RELIEF

COUNT ONE - VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

8 U.S.C. § 1225(b)(2) and 1226(a)

1. Mr. Pastrana-Beltran realleges and incorporates by reference each and every allegation contained above.

2. 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.

3. When ICE arrested Mr. Pastrana-Beltran on December 29, 2025, he was an "alien[] already in the country," and accordingly "may only be subject to detention as a matter of discretion under § 1226(a)." *See J.U.*, 805 F. Supp. 3d at 496. This conclusion is now binding in this Circuit. *See*, 2026 WL 1146044, at *21. Respondents detained Mr.

Pastrana-Beltran without providing any of the pre-deprivation process required by Section 1226(a)—no notice, no opportunity to be heard, and no individualized determination before depriving him of his liberty. Because Mr. Pastrana-Beltran’s detention was unlawful from its inception due to this complete failure of pre-deprivation process, a bond hearing cannot remedy the violation, and he is entitled to immediate release. *See J.U.*, 805 F. Supp. 3d at 498 (“Given the deprivation of Petitioner’s liberty, . . . the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only form of relief and the most appropriate remedy.”).

4. Respondents’ detention of Mr. Pastrana-Beltran without any pre-deprivation process violated his procedural due process rights under the Fifth Amendment. Because no process was provided before detention, immediate release is the only adequate remedy—a post-hoc bond hearing cannot cure the constitutional violation that occurred at the inception of his detention.

COUNT TWO - VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

5 U.S.C. § 706(2)

5. Mr. Pastrana-Beltran realleges and incorporates by reference each and every allegation contained above.

6. The Administrative Procedure Act (“APA”) provides that “a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

7. The statute further provides that the reviewing court shall “compel agency

action unlawfully withheld or unreasonably delayed,” 5 U.S.C. § 706(1), and “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “contrary to constitutional right, power, privilege, or immunity,” *id.* § 706(2)(A)-(B).

8. Respondents’ failure to afford Mr. Pastrana-Beltran a bond hearing reflects an arbitrary and capricious interpretation of 8 U.S.C. § 1226(a) and an unreasoned departure from established precedent. This failure constitutes a final agency action within the meaning of the APA.

9. Respondents’ failure to afford Mr. Pastrana-Beltran a bond hearing contravenes 8 U.S.C. § 1226(a), and is therefore arbitrary, capricious, and not in accordance with law.

10. Respondents’ failure to afford Mr. Pastrana-Beltran a bond hearing violates the Due Process Clause and is therefore contrary to law and constitutional right.

11. Mr. Pastrana-Beltran possesses no other adequate remedy at law to obtain direct review of the agency actions and omissions challenged herein or to redress Respondents’ failure to afford him the bond procedures required by due process and the INA.

12. Respondents’ failure to afford Mr. Pastrana-Beltran a bond hearing has caused—and continues to cause—him substantial and concrete harm.

13. Accordingly, Respondents are in violation of the APA. 5 U.S.C. § 706(1), (2)(A)-(B).

COUNT THREE - VIOLATION OF PROCEDURAL DUE PROCESS

U.S. Const. amend. V

14. Mr. Pastrana-Beltran realleges and incorporates by reference each and every allegation contained above.

15. 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 [Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

16. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335.

17. The *Mathews* test strongly supports the conclusion that Respondents’ detention of Mr. Pastrana-Beltran without any pre-deprivation process violates his procedural due process rights. Because this violation occurred at the inception of detention—before any notice or opportunity to be heard was provided—a post-hoc bond hearing cannot cure it, and Mr. Pastrana-Beltran must be released immediately.

COUNT FOUR - VIOLATION OF SUBSTANTIVE DUE PROCESS

U.S. Const. amend. V

18. Mr. Pastrana-Beltran realleges and incorporates by reference each and

every allegation contained above.

19. 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 [Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

20. “This guarantee includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides.” *Hasan*, 800 F. Supp. 3d at 658 (citing *Reno*, 507 U.S. at 302).

21. Respondents’ detention of Mr. Pastrana-Beltran is arbitrary and devoid of justification, in violation of his substantive due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Mr. Pastrana-Beltran respectfully requests that this Court:

22. Exercise jurisdiction over this matter;

23. Enjoin Respondents from moving Mr. Pastrana-Beltran outside the jurisdiction of the Court and United States pending its adjudication of this petition and full and fair adjudication of his immigration case, including any potential appeal;

24. Release Mr. Pastrana-Beltran from custody of Respondents pending disposition of this petition;

25. Declare that Mr. Pastrana-Beltran’s detention violates the APA, the INA, and the Due Process Clause of the Fifth Amendment;

26. Issue a Writ of Habeas Corpus ordering Mr. Pastrana-Beltran’s immediate

and unconditional release from custody of Respondents, as the only adequate remedy for Respondents' complete failure to provide any pre-deprivation process before detaining him, restoring him to the same status of liberty that he enjoyed prior to his arrest, pending the disposition of his removal proceedings, and any potential appeal in those proceedings by Mr. Pastrana-Beltran;

27. In the alternative, only if the Court declines to order immediate release, order that Mr. Pastrana-Beltran be given a bond hearing with adequate procedural protections;

- 28. Find that Respondents' litigation position is substantially unjustified;
- 29. Award Mr. Pastrana-Beltran costs and reasonable attorneys' fees; and
- 30. Order such other relief as this Court may deem just and proper.

Stephanie Lindemuth
Kari Degraffenreid
(*Pro hac vice* forthcoming)
One Bryant Park
New York, New York 10036
Telephone: (212) 872-7403
Facsimile: (212) 872-1002
slindemuth@akingump.com
arasani@akingump.com
kdegraffenreid@akingump.com

*Attorneys for Petitioner Fredy
Pastrana-Beltran*