UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GERSON JOSUE SANTAMARIA TURCIOS, Petitioner, vs. RAUL MALDONADO, JR., *in his official capacity as Warden of Metropolitan Detention Center Brooklyn;* KENNETH GENALO, in his official capacity as New York *Field Office Director for U.S. Immigration And Customs Enforcement;* and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement;* MARKWAYNE MULLIN, in his capacity as *Secretary of Homeland Security;* and TODD BLANCHE, in his official capacity as Acting *Attorney General of the United States,* Respondents.	)	CASE NO.:

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

I. INTRODUCTION AND SCOPE OF PETITION

1. Petitioner Gerson Josue Santamaria Turcios, by and through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241.

2. ICE arrested Petitioner on July 18, 2025, and Petitioner remained in ICE custody through the proceedings addressed in Exhibit 1, S.D.N.Y. Decision, ECF 44. Petitioner is now detained at the Metropolitan Detention Center Brooklyn ("MDC Brooklyn") in Brooklyn, New York. See Exhibit 2, ICE locator.

3. This is a narrowly focused habeas corpus petition challenging Petitioner's current prolonged civil immigration detention and U.S. Immigration and Customs Enforcement's ("ICE") February 1, 2026, post-order custody review ("February 2026 POCR"), including the written continued-detention decision that Respondents now rely on as the operative custody basis for Petitioner's ongoing confinement. Exhibit 3.
4. Petitioner seeks immediate release as the primary remedy because his continued detention rests on a custody decision that lacks a lawful, reasoned, individualized basis.
5. In the alternative, Petitioner seeks an individualized bond hearing before a neutral decisionmaker, at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary, and at which the decisionmaker must consider alternatives to detention and Petitioner's ability to pay any monetary bond. In *Black v. Decker*, 103 F.4th 133, 138, 155–59 (2d Cir. 2024), the Second Circuit held that *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs prolonged immigration detention due-process challenges and approved a bond-hearing remedy requiring the Government to justify continued detention by clear and convincing evidence, with consideration of ability to pay and alternatives to detention.
6. In the further alternative, Petitioner seeks a new custody review that complies with 8 C.F.R. § 241.4, principles of due process including a neutral decisionmaker, and results in a written decision that meaningfully addresses the actual record, including danger, flight risk, likelihood of compliance, community support, sponsor evidence, criminal-history information, disciplinary history, and alternatives to detention.

7. Petitioner does not seek to review Petitioner's underlying removal order or re-litigate the Southern District of New York's decision in *Gerson Josue Santamaria Turcios v. Maldonado*, No. 1:25-cv-8150-MKV, ECF 44, 2026 WL 1180124 (S.D. N.Y. Apr. 30, 2026). Nor does Petitioner ask this Court to sit in appellate review of that decision. This case is different. The S.D.N.Y. decision referenced the February 2026 POCR primarily to conclude that it cured the defective October 2025 POCR and that Petitioner could not show prejudice from the earlier defect. It did not separately adjudicate, as an independent ground for prospective relief, whether the February 2026 POCR and written decision themselves complied with 8 C.F.R. § 241.4, Accardi principles, and procedural due process. Exh 1. This Petition challenges Petitioner's present custody and the current operative custody decision on which ICE continues to rely and raises narrow challenges not previously decided.
8. ICE's February 2026 decision is constitutionally and deficient under the governing regulations because ICE's own records state "Criminal Record... None," yet the decision relied on boilerplate dangerousness language and generic immigration-history facts without identifying any criminal conviction, arrest, disciplinary infraction, violent conduct, or other individualized evidence showing danger to the community. Further, no separate 180-day Headquarters review as required by 8 C.F.R. § 241.4(c)(2), (i), and (k) was conducted. The February 1, 2026 POCR was conducted as a corrective 90-day-type review after ICE admitted the October notice defect, and did not provide the distinct Headquarters-level process contemplated at the 180-day mark. 8 C.F.R. § 241.4(k)(2).

9. The February 2026 decision also failed to address—to such a degree suggesting the evidence was entirely ignored— the favorable evidence submitted by counsel, including sponsor evidence and more than fifty community declarations attesting to Petitioner's character and community support.

10. The absence of any meaningful engagement with that evidence is significant and of constitutional weight. A custody decision that continues detention while ignoring the most probative evidence bearing on danger, flight risk, supervision, and compliance does not provide the individualized review required by 8 C.F.R. § 241.4 or procedural due process.

II. JURISDICTION

A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 and § 1331

11. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and challenges the legality and procedures of his continued civil immigration detention. Habeas review remains available for constitutional and legal challenges to post-removal-period detention. In *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), the Supreme Court recognized habeas review for statutory and constitutional challenges to post-removal-period detention, and the prior S.D.N.Y. decision acknowledged that principle while addressing Petitioner's prior petition.

12. This Court also has federal-question jurisdiction under 28 U.S.C. § 1331 because Petitioner's claims arise under the Constitution, the Immigration and Nationality Act,

federal regulations governing post-order custody review, and the Administrative Procedure Act to the extent APA-style review is available.

13. Petitioner invokes the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and Article III only to confirm that this Court may adjudicate substantial constitutional and legal challenges to ongoing executive detention. The Supreme Court has recognized the continuing importance of habeas review in immigration-detention cases, including in *INS v. St. Cyr*, 533 U.S. 289 (2001), *Felker v. Turpin*, 518 U.S. 651 (1996), and *Boumediene v. Bush*, 553 U.S. 723 (2008). In *Velasco Lopez v. Decker*, 978 F.3d 842, 850–51 (2d Cir. 2020), the Second Circuit recognized habeas review of constitutional challenges to immigration-detention procedures and explained that whether a detainee received constitutionally required process is not a discretionary custody determination.

14. Petitioner assumes, for purposes of this petition only, that 8 U.S.C. § 1231(a)(6) governs his detention, consistent with Exhibit 1. Petitioner preserves, solely in the alternative and for appellate or further-review purposes, the argument that the BIA administrative stay and resulting non-executability of the removal order should inform the statutory and constitutional analysis of his continued detention as governed by 8 U.S.C. § 1226(a). Section 1231(a)(6) permits continued detention beyond the removal period for certain noncitizens, including those determined by the Attorney General to be a risk to the community or unlikely to comply with the removal order.

15. Petitioner's claims do not seek review of the underlying removal order. They challenge only the legality of Petitioner's current prolonged detention, Respondents' continued reliance on the February 2026 POCR as the operative custody decision, and the procedures used to continue detention.

B. The INA's Jurisdictional-Channeling Provisions Are Inapplicable

16. The INA's jurisdictional-channeling provisions do not bar this action because Petitioner challenges detention and detention procedures, not the merits of removability or the validity of the removal order.

17. Section 1252(b)(9) does not channel this petition into a petition for review because Petitioner does not seek review of any order of removal. His claims concern custody, prolonged detention, and the procedures used to continue detention.

18. Section 1252(f)(1) does not bar the individualized relief sought here. Petitioner seeks only as-applied relief directed to his own detention, including release, a bond hearing, or a new regulation-compliant POCR. He does not seek class-wide or programmatic relief restraining operation of the INA.

19. Section 1252(g) likewise does not apply because Petitioner does not challenge a decision to commence proceedings, adjudicate a case, or execute a removal order. He challenges ongoing civil detention and the process used to justify that detention.

20. To the extent Respondents invoke § 1252(e)(3) or expedited-removal channeling principles, those provisions are inapplicable because this petition does not bring a systemic or facial challenge to the expedited-removal system, its implementing regulations, or written policies. Petitioner challenges only his individual detention

and the February 2026 custody decision that Respondents continue to rely upon.

C. The Court May Grant Declaratory, Injunctive and Habeas Relief

21. This Court may grant habeas relief under 28 U.S.C. § 2241 and may grant appropriate declaratory and injunctive relief under its federal-question jurisdiction, the Declaratory Judgment Act, the All Writs Act, Federal Rules of Civil Procedure 57 and 65, and its inherent equitable authority.

22. The relief requested is individualized. Petitioner seeks immediate release as the primary remedy. In the alternative, he seeks a constitutionally adequate bond hearing or a new custody review complying with 8 C.F.R. § 241.4. Section 241.4(d) requires a custody-retention decision to be provided to the detained noncitizen, to briefly set forth the reasons for continued detention, and provides no administrative appeal from the custody decision. 8 C.F.R. § 241.4(d).

D. Limited Anti-Transfer Relief

23. Petitioner also seeks temporary and preliminary injunctive relief preventing Respondents from transferring him outside the Eastern District of New York while this habeas action is pending, absent further order of this Court or advance written notice to Petitioner's counsel and the Court. Petitioner does not contend that a transfer would automatically divest this Court of jurisdiction. In *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004), the court recognized that a habeas court retains jurisdiction after transfer where the petitioner named the proper immediate custodian at the time of filing. The requested anti-transfer relief is instead necessary to preserve Petitioner's access to counsel, avoid practical prejudice and unnecessary custodial disputes,

maintain the status quo, and ensure that any relief ordered by this Court remains effective.

III. VENUE

24. Venue is proper in the United States District Court for the Eastern District of New York because Petitioner is currently detained at the MDC Brooklyn, under the custody of the Department of Homeland Security ("DHS"). Respondent Raul Maldonado, Jr., as the Warden of MDC Brooklyn, is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B). Furthermore, the Respondents are officers of United States agencies, the Petitioner is detained within this District, and there is no real property involved in this action. Venue therefore is applicable in this district.

IV. PARTIES

25. Petitioner Gerson Josue Santamaria Turcios is a 23-year-old native and citizen of Honduras. He has resided in New York since late 2019, and is a respected member of the Hudson Valley community. He has no criminal history. He has been detained by ICE since July 18, 2025, was previously held at the Orange County Jail in Goshen, New

York, and is currently detained at the Metropolitan Detention Center Brooklyn in Brooklyn, New York.

26. Respondent Raul Maldonado Jr., is the warden or other official in charge of the Metropolitan Detention Center Brooklyn. He is sued in his official capacity. As the official with day-to-day control over Petitioner's present physical confinement, he is Petitioner's immediate custodian for purposes of this habeas corpus petition.

27. Respondent Kenneth Genalo is the Field Office Director for the New York Field Office of ICE, a component of DHS. He is sued in his official capacity. As the director of the ICE field office with responsibility for Petitioner's immigration detention and removal, he exercises legal authority over the custody determinations challenged in this petition.

28. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is sued in his official capacity.

29. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is sued in his official capacity. As Secretary, he is responsible for the administration and enforcement of federal immigration laws, including the detention of noncitizens in DHS custody.

30. Respondent Todd Blanche is the Attorney General of the United States. He is sued in his official capacity. The Attorney General is vested with authority over the interpretation and administration of the Immigration and Nationality Act, the operations of the Executive Office for Immigration Review ("EOIR") that oversees all the immigration courts and immigration judges.

V. FACTUAL BACKGROUND

31. Petitioner is a native and citizen of Honduras who entered the United States as a minor in December 2019. Petitioner was later placed in immigration proceedings and ordered removed in absentia.

32. ICE arrested Petitioner on July 18, 2025, at the residence he had on file with the immigration authorities, pursuant to the *in absentia* removal order. Petitioner has remained in civil immigration detention since that date. As of May 4, 2026, Petitioner has been detained for more than 290 days, approximately nine and a half months. That prolonged civil detention heightens the private liberty interest at stake and underscores the need for meaningful, individualized process before detention continues.

33. Petitioner is currently detained at MDC Brooklyn. MDC Brooklyn is a custodial detention facility, and Petitioner's confinement there imposes a carceral restraint on liberty relevant to the due-process analysis.

34. On July 29, 2025, Petitioner moved to reopen and rescind the *in absentia* removal order. On August 1, 2025, the Immigration Judge denied that motion. Petitioner appealed to the Board of Immigration Appeals ("BIA") and filed an emergency motion for a stay of removal. The BIA issued an order administratively staying Petitioner's removal pending the outcome of that appeal. Exhibit 6 BIA stay. That administrative stay remains a legal impediment to the present execution of Petitioner's removal order, and Petitioner preserves the argument that this non-executability affects the statutory and constitutional analysis of his continued detention.

35. In September 2025, Petitioner's counsel submitted a written request to ICE seeking Petitioner's release from custody. That submission included an affidavit from a citizen in Rhinebeck who offered to ensure Petitioner's attendance at future immigration proceedings and more than fifty declarations from community members attesting to Petitioner's character. Elected officials also wrote in support of Petitioner's release. Those materials bore directly on the regulatory and constitutional questions of danger, flight risk, likelihood of compliance, and whether reasonable conditions of supervision would suffice.

36. Petitioner has no known criminal history, and ICE's own records state "Criminal Record… None." *See* Exhibit 4. That fact is central to this petition because the February 2026 custody decision relied on dangerousness language without identifying any criminal conviction, arrest, disciplinary infraction, violent conduct, or other individualized evidence supporting dangerousness. Exh 3.

37. Earlier, ICE served Petitioner with notice that it would conduct a 90-day post-order custody review in October 2025. The notice stated that release depended on Petitioner demonstrating that he would not pose a danger to the community and would not present a flight risk. The notice also stated that ICE would consider factors including prior failures to appear at proceedings and that Petitioner could submit documentation in support of release.

38. ICE did not mail a copy of the October 2025 custody-review notice to Petitioner's counsel. ICE conducted the October 2025 POCR, based on Petitioner's immigration history and related documents and information. ICE did not consider the materials

that Petitioner's counsel had submitted with the September 2025 release request in connection with the October 2025 POCR. Those materials included sponsor evidence and more than fifty community declarations attesting to Petitioner's character and reliability.

39. On October 3, 2025, ICE separately denied counsel's September 2025 release request. On October 14, 2025, ICE issued the written POCR decision continuing Petitioner's detention. Exhibit 5. The October 14, 2025 decision stated that ICE had determined to maintain custody because Petitioner had not demonstrated that, if released, he would not pose a danger to the community or the safety of other persons. The decision recited immigration-history facts, including that Petitioner had entered the country without admission or parole, failed to appear in immigration court, was ordered removed in absentia, and was arrested pursuant to an outstanding removal order.

40. Petitioner filed a habeas petition challenging his detention and the custody-review process in the Southern District of New York. During that proceeding, ICE acknowledged that Petitioner's counsel had submitted a Form G-28 with the September 2025 release request and that ICE had overlooked that appearance when it conducted the October 2025 POCR. ICE then conducted a new POCR after providing notice to Petitioner and counsel.

41. On January 14, 2026, Petitioner had been detained for 180 days, and should have been provided a higher level custody review under 8 C.F.R. § 241.4(k)(2), but was not.

42. On February 1, 2026, ICE conducted the new POCR. Petitioner's counsel submitted materials in support of release in connection with that review. Those materials

addressed Petitioner's lack of criminal history, lack of disciplinary history, community ties, sponsor support, risk of flight, and available conditions of supervision. After the February 2026 POCR, ICE again determined that Petitioner should remain detained. Exh. 3.

43. The February 2026 decision stated that ICE was unable to conclude that the factors set forth in 8 C.F.R. § 241.4(e) had been satisfied. In the prior proceeding, Respondents characterized the February 2026 decision as based on Petitioner's immigration history and his failure to appear for certain immigration hearings. The February 2026 decision did not identify any criminal conviction, arrest, disciplinary infraction, violent incident, or other individualized fact supporting dangerousness.

44. Petitioner's February 2026 custody-review materials included evidence directed to release, supervision, and community support. Petitioner alleges that ICE's own records state "Criminal Record… None." Exh. 4. Petitioner further alleges, upon information and belief, that he has not incurred disciplinary infractions while detained at Orange County Jail or MDC Brooklyn. In fact, he recently received a letter of good behavior. Exhibit 7. The contrast between ICE's own "Criminal Record… None" notation and the February 2026 decision's continued reliance on dangerousness language underscores Petitioner's claim that the review was not individualized.

45. The February 2026 decision did not meaningfully address the sponsor evidence, the community declarations, the absence of criminal history, the absence of disciplinary history, or any alternatives to detention or possible conditions of supervision. It

completely ignored substantial evidence submitted by Petitioner's counsel. See Exhibit 8. Under 8 C.F.R. § 241.4(d), a custody-retention decision must briefly set forth the reasons for continued detention. Petitioner alleges that the February 2026 decision did not satisfy that requirement because it relied on generic immigration-history facts and did not review the actual record under the regulatory criteria for continued detention.

46. Upon information and belief, since the February 2026 POCR, ICE has not provided Petitioner with any later meaningful custody review addressing his prolonged detention, his lack of criminal history, his detention record, his sponsor evidence, his community support, or whether reasonable conditions of supervision would mitigate any asserted risk. Petitioner has not received a bond hearing before a neutral adjudicator at which Respondents bear the burden of proving that continued detention is necessary.

47. Under ICE's own POCR schedule, the October 2025 review functioned as the 90-day custody review. If Petitioner was not released or removed within approximately three months after that review, ICE was required to provide the further custody review contemplated by 8 C.F.R. § 241.4(c)(2), § 241.4(i), and § 241.4(k). In *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 388–91 (W.D.N.Y. 2009), the court explained that after the expiration of the 90-day removal period and the additional three-month period, further custody determinations must be made through the Headquarters post-order detention process.

48. Upon information and belief, ICE has not provided Petitioner with a timely,

regulation-compliant 180-day custody review by the Headquarters Post-Order Detention Unit or other Headquarters-level decisionmaker. The February 1, 2026 POCR was conducted as a corrective review after ICE admitted the October 2025 notice-to-counsel defect; it did not provide Petitioner with the process required for a 180-day Headquarters-level review, including a review-panel recommendation, a personal interview if release was not recommended, and a written determination addressing the § 241.4(e) and § 241.4(f) factors. The S.D.N.Y. Decision describes the February 2026 POCR as the new review conducted after ICE acknowledged that counsel's Form G-28 had been overlooked and after counsel submitted release materials. Exh. 1.

49. On April 30, 2026, the Southern District denied Petitioner's prior habeas petition in Exh. 1. The court held that Petitioner's detention was governed by 8 U.S.C. § 1231(a), denied Petitioner's motion for voluntary dismissal after his transfer to MDC Brooklyn, and concluded that it retained jurisdiction despite that transfer. The court also concluded that ICE's February 2026 POCR cured the October 2025 notice-to-counsel defect and that the asserted POCR errors did not warrant habeas relief on the record then before the court.

50. Petitioner remains detained at MDC Brooklyn. As of May 4, 2026, Petitioner has been detained for more than 290 days, approximately nine and a half months, since ICE arrested him on July 18, 2025. Upon information and belief, ICE has not provided Petitioner with any further meaningful custody review after the February 2026 POCR. Petitioner also has not received a bond hearing before a neutral adjudicator at which

Respondents bear the burden of proving that continued detention is necessary. Petitioner's detention at MDC Brooklyn is carceral in practical effect and imposes the physical restraint on liberty that lies at the center of the due-process analysis.

51. Petitioner's prolonged detention has caused concrete harms, including separation from his community, inability to maintain employment, financial hardship, and confinement in a carceral facility.

VI. RELATIONSHIP TO PRIOR HABEAS JUDGMENT AND SUCCESSIVE PETITION ISSUE

52. Petitioner twice previously sought habeas relief in the Southern District of New York. In Exh. 1, that court denied relief, held that Petitioner's detention was governed by 8 U.S.C. § 1231(a), rejected Petitioner's constitutional challenge to continued detention, and denied Petitioner's request to voluntarily dismiss after his detention exceeded the "constitutional limit" threshold of six-months under *Clark v. Martinez* as well as his transfer to MDC Brooklyn. S.D.N.Y. decision at Exh. 1 also addressed ICE's October 2025 POCR, the conceded notice-to-counsel defect in that review, and ICE's later February 2026 POCR conducted after notice to Petitioner and counsel.

53. This petition does not ask this Court to sit in appellate review of S.D.N.Y. decision at Exh. 1. Petitioner preserves his right to appeal this decision to the United States Court of Appeals for the Second Circuit. This petition instead challenges the current custody basis on which ICE continues to detain Petitioner, including ICE's continued reliance on the February 2026 POCR and the written continued-detention decision issued after

that review. Petitioner seeks immediate release as the primary remedy because continued detention allegedly rests on an unlawful, non-individualized custody decision. In the alternative, Petitioner seeks a constitutionally adequate bond hearing before a neutral decisionmaker, or, at minimum, a new custody review that complies with 8 C.F.R. § 241.4.

54. Petitioner recognizes that Respondents may argue that this petition is successive, repetitive, or abusive. Petitioner further recognizes that S.D.N.Y. decision at Exh. 1 considered the February 2026 POCR in addressing whether the October 2025 notice defect had been cured, whether Petitioner had shown prejudice from that earlier defect, and whether the asserted POCR defects warranted habeas relief. But it did not squarely adjudicate the constitutionally deficiencies in February 2026 written continued-detention decision as an independent operative custody determination under Accardi principles, APA-style reasoned decision-making, and a full *Mathews/Black* prolonged-detention due-process framework - indeed, that Petition was briefed prior to Petitioner's detention for 180 days.

55. The February 2026 POCR remains the current operative custody decision supporting Petitioner's confinement. It was a later-accruing and intervening agency action relative to the original October 2025 POCR and the original habeas filing, and Petitioner's detention has continued to materially lengthen since that review. Petitioner therefore contends that this petition challenges present, ongoing prolonged detention and the current custody decision used to justify it, rather than merely repeating the prior petition. Moreover, Petitioner's detention has continued to

lengthen since the February 2026 POCR and the date of S.D.N.Y. decision at Exh. 1, such that his prolonged-detention due-process claim is now in a later-ripening posture, with the Mathews analysis weighing more heavily in favor of additional process.

56. The distinction matters. This petition is not an attempt to relitigate the same detention determination in the same posture. It challenges the February 2026 POCR as a later-accruing agency action relative to the October 2025 POCR and as the current operative agency decision supporting Petitioner's continued detention. S.D.N.Y. decision at Exh. 1 described ICE's February 2026 POCR as the review ICE conducted after acknowledging that counsel's Form G-28 had been overlooked in connection with the October 2025 POCR, providing notice to counsel, and receiving counsel's submission. Functionally, the February 2026 continued-detention decision is the current agency determination governing Petitioner's confinement. The present petition challenges Respondents' continued reliance on that decision after Petitioner's detention has become prolonged, and alleges that the decision is noncompliant with 8 C.F.R. § 241.4, *Accardi* principles, the APA, and procedural due process.

57. Respondents are expected to argue that this petition is barred by 28 U.S.C. § 2244(a), *Chambers v. United States*, 106 F.3d 472, 475-76 (2d Cir. 1997), and abuse-of-the-writ principles. Section 2244(a) provides that no judge is required to entertain a habeas application if the legality of detention has already been determined on a prior habeas application.

58. This petition is not a *Chambers*-style repetition of the same claim in the same posture.

It challenges Respondents' continued reliance on the February 2026 written POCR decision as the current operative custody determination supporting Petitioner's ongoing confinement.

59. The February 2026 decision functions as the current operative "judgment" for custody purposes. By analogy, *Magwood v. Patterson*, 561 U.S. 320, 338–42 (2010), *Banister v. Davis*, 140 S. Ct. 1698, 1705 (2020), and *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643–45 (1998), support the proposition that a later filing is not automatically barred merely because it is second in time, especially where it challenges a later operative decision or a claim in a later-ripe posture. By analogy to *Magwood*, *Banister*, and *Stewart*, the February 2026 continued-detention decision is a later-arising, distinct basis for Petitioner's confinement, and this petition challenges that decision and the present, prolonged detention it supports. It is therefore not simply a second attempt to litigate the same claim resolved in the S.D.N.Y. decision at Exh. 1.

60. Petitioner also acknowledges the Second Circuit's habeas-specific preclusion principles. In *Muniz v. United States*, 236 F.3d 122, 127-8 (2d Cir. 2001), the Second Circuit distinguished ordinary res judicata from abuse-of-the-writ principles in successive habeas litigation.

61. Petitioner recognizes that those cases arose outside this precise § 2241 immigration-detention posture and cites them only by analogy. The relevant point is limited: this petition challenges the current custody basis and later-ripened prolonged-detention concerns, rather than seeking reconsideration of the S.D.N.Y. decision at Exh. 1.

62. S.D.N.Y. decision at Exh. 1 addressed the February 2026 POCR in the context of cure,

prejudice, and whether the alleged POCR defects warranted habeas relief on the record then before the Southern District. Petitioner respectfully submits that the S.D.N.Y. decision at Exh. 1 did not separately adjudicate whether the February 2026 written decision, as the current operative custody determination after further prolonged detention, warrants prospective relief in the form of release, a *Black*-style bond hearing, or a remand for a new regulation-compliant POCR.

VII. EXHAUSTION AND FUTILITY

63. Petitioner has exhausted any available administrative process, and no further administrative remedy is available to challenge the operative custody-review decision. The governing post-order custody regulation provides that a decision to retain custody must be provided to the detained noncitizen and must briefly set forth the reasons for continued detention, and it further provides that there is no appeal from the district director's or Executive Associate Commissioner's custody decision. 8 C.F.R. § 241.4(d).

64. Petitioner, through counsel, submitted materials in support of release before ICE issued the February 2026 continued-detention decision. The S.D.N.Y. decision at Exh. 1 recounts that ICE conducted the new POCR after notice to Petitioner and counsel, and that counsel submitted documents in support of release. It also describes Petitioner's September 2025 release request as supported by an affidavit from a citizen in Rhinebeck and more than fifty community declarations attesting to Petitioner's character.

65. Further administrative requests would be futile. ICE already acknowledged the

October 2025 notice-to-counsel defect, conducted a replacement POCR in February 2026, accepted counsel's submission, and again issued a continued-detention decision that Petitioner alleges lacks individualized reasoning. The POCR process also cannot provide the principal habeas relief sought here: immediate release by this Court, or, in the alternative, a neutral bond hearing at which Respondents bear the burden of justifying continued detention by clear and convincing evidence.

66. Because ICE has already issued the February 2026 custody decision and the applicable regulation provides no internal appeal from that decision, any further request to ICE would be discretionary, duplicative, and inadequate to provide the habeas relief sought here, including immediate release ordered by this Court or, alternatively, a bond hearing before a neutral decisionmaker at which Respondents bear the burden of justifying continued detention. 8 C.F.R. § 241.4(d).

VIII. LEGAL FRAMEWORK

67. For purposes of this petition only, Petitioner assumes that 8 U.S.C. § 1231(a)(6) governs his detention. Section 1231(a)(6) permits continued detention beyond the removal period for specified categories of noncitizens, including those determined to be a risk to the community or unlikely to comply with the removal order. 8 U.S.C. § 1231(a)(6).

68. Petitioner does not ask this Court to relitigate S.D.N.Y.'s decision at Exh. 1 statutory-detention holding, does not seek a fresh ruling that 8 U.S.C. § 1226(a) governs, and does not assert a standalone *Zadvydas* claim based solely on the BIA stay.

69. Petitioner preserves, solely in the alternative and for appellate or further-review

purposes, the argument that his detention should be analyzed under § 1226(a), or that the non-executability of his removal while the BIA administrative stay remains in effect should inform the constitutional analysis of his continued detention.

70. The Fifth Amendment prohibits deprivation of liberty without due process of law. U.S. Const. amend. V.

71. In *Velasco Lopez v. Decker*, 978 F.3d 842, 850–51 (2d Cir. 2020), the Second Circuit recognized habeas review of constitutional challenges to immigration-detention procedures and explained that whether constitutionally required process was provided is not a discretionary custody determination.

72. In *Black v. Decker*, 103 F.4th 133, 138, 147–48, 155–59 (2d Cir. 2024), the Second Circuit held that *Mathews v. Eldridge* supplies the proper framework for prolonged immigration-detention due-process challenges and approved a bond-hearing remedy requiring the Government to justify continued detention by clear and convincing evidence, with consideration of ability to pay and alternatives to detention.

73. Although *Black* arose under § 1226(c), district courts have applied *Mathews* to prolonged-detention claims under § 1231(a)(6). In *Caceres v. Joyce*, 813 F. Supp. 3d 407, 415–16 (S.D.N.Y. 2025), the court recognized that *Johnson v. Arteaga-Martinez* resolved a statutory issue under § 1231(a)(6) but did not decide whether the Due Process Clause requires additional procedures for prolonged § 1231 detention, and the court proceeded to analyze the due-process claim under *Mathews*.

74. The post-order custody-review regulations are set forth at 8 C.F.R. § 241.4. 8 C.F.R. § 241.4. Section 241.4(d) requires that any custody-retention decision be provided to the

detained noncitizen, briefly set forth the reasons for continued detention, and be treated as having no administrative appeal from the district director's or Executive Associate Commissioner's custody decision. 8 C.F.R. § 241.4(d).

75. Section 241.4(d) is not the only relevant regulatory provision. Before making a release decision, ICE must consider whether the detainee is likely to pose a threat to the community, likely to violate conditions of release, or likely to pose a significant flight risk. 8 C.F.R. § 241.4(d); S.D.N.Y. decision at Exh. 1 recognized that § 241.4(e)(4)–(6) requires consideration of danger, likely compliance with release conditions, and significant flight risk.

76. Section 241.4(d)(3) further requires service on counsel of record where a representative has completed a Form G-28, underscoring that the POCR regulations protect meaningful participation by counsel, not merely internal agency file review.

77. ICE also must consider the regulatory factors in § 241.4(f), including prior failures to appear for immigration proceedings. S.D.N.Y. decision at Exh. 1 specifically noted that § 241.4(f)(7) requires consideration of prior failures to appear.

78. Section 241.4 contemplates more than a single file review. After the initial 90-day review at the close of the removal period, further custody review is required if the noncitizen remains detained and not removed during the ensuing three months. That further review must proceed through the Headquarters-level procedures set out in § 241.4(c)(2), § 241.4(i), and § 241.4(k). In *Virani v. Huron*, No. 5:19-CV-499-FB, 2020 WL 1333172, at *9–11 (W.D. Tex. Mar. 23, 2020), the court described the regulatory scheme as requiring an initial review at the close of the 90-day removal period, a second

custody review by the Headquarters Post-Order Detention Unit at approximately 180 days, and later reviews if detention continues.

79. Those provisions make the written-reasons requirement meaningful. A decision cannot satisfy § 241.4(d) merely by reciting a conclusion; it must show that ICE considered the material evidence bearing on the § 241.4(e) and § 241.4(f) factors, including danger, flight risk, likelihood of compliance, criminal-history information, institutional behavior, community ties, sponsor evidence, and available conditions of supervision.

80. A custody decision under § 241.4 must do more than recite boilerplate conclusions. It must meaningfully address material evidence bearing on danger, flight risk, likelihood of compliance, available conditions of supervision, and the reasons continued detention remains necessary.

IX. CLAIMS FOR RELIEF

COUNT ONE
Procedural Due Process: Continued Detention Based on the February 2026 POCR, After Prolonged Detention, Violates *Mathews* and *Black*

81. This claim challenges Respondents' continued reliance on the February 2026 POCR and written continued-detention decision as the current operative custody basis after Petitioner's detention has become prolonged.

82. The February 2026 POCR did not provide Petitioner an in-person hearing before a neutral adjudicator, an opportunity to present testimony or witnesses, an opportunity

to confront or contest adverse evidence, or any adversarial process in which Respondents bore the burden of justifying detention.

83. This claim is not a renewed standalone *Zadvydas* significant-likelihood-of-removal claim. S.D.N.Y. decision at Exh. 1rejected Petitioner's prior *Zadvydas* argument on the record then before the Southern District, including the Government's representation that Petitioner had a valid Honduran travel document and could be removed once the legal impediment was lifted.

84. Petitioner does not renew a standalone *Zadvydas* claim and does not contend that detention is unlawful merely because it has exceeded six months. Rather, Petitioner challenges Respondents' continued reliance on the February 2026 POCR as the current operative custody decision because that decision failed to comply with 8 C.F.R. § 241.4 and did not provide the basic procedural safeguards required before ICE may continue post-order detention. Section 241.4 requires a written custody-retention decision setting forth the reasons for continued detention and provides no administrative appeal from that decision. 8 C.F.R. § 241.4(d). In *Virani v. Huron*, No. 5:19-CV-499-FB, 2020 WL 1333172, at *8–12 (W.D. Tex. Mar. 23, 2020), the court distinguished a rejected *Zadvydas* theory from a viable procedural challenge based on alleged noncompliance with the § 241.4 custody-review process. In *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747, 758 (S.D. Tex. 2008), the court likewise held that failure to provide the required POCR safeguards violated procedural due process even though the petitioner had not established entitlement to release under *Zadvydas*.

85. In *Black v. Decker*, 103 F.4th 133, 138, 147–48, 155–59 (2d Cir. 2024), the Second Circuit held that *Mathews* supplies the proper framework for prolonged immigration-detention due-process challenges and approved a bond-hearing remedy requiring the Government to justify continued detention by clear and convincing evidence, with consideration of alternatives to detention and ability to pay.

86. When applying the *Mathews v. Eldridge* factors to prolonged detention under § 1231(a)(6), courts consider the private interest affected, the risk of erroneous deprivation, and the government's interest. *Lu v Genalo*, --- F.Supp.3d ----, 2025 WL 3512244 *3 (S.D. N.Y. 2025). Prolonged detention weighs in favor of the detainee, and a bond hearing may be constitutionally required under § 1231(a)(6). --- F.Supp.3d ----, 2025 WL 3512244 *3-6 (S.D. N.Y. 2025).

A. Petitioner's private liberty interest is substantial.

87. The first *Mathews* factor favors Petitioner because the private interest at stake is freedom from physical detention. Petitioner's current detention of 290+ days far exceeds the six-month presumptive reasonableness period established in *Zadvydas*, thereby amplifying the first *Mathews* factor concerning the private liberty interest at stake. *Caceres v Joyce*, 813 F.Supp.3d 407, 416-19 (S.D.N.Y. 2025). As the period of confinement grows, so do the required procedural protections. *Id.*

88. In *Black v. Decker*, 103 F.4th 133, 151–52 (2d Cir. 2024), the Second Circuit treated prolonged immigration detention as a substantial deprivation of liberty for purposes of the *Mathews* analysis.

89. In *Zadvydas v. Davis*, 533 U.S. 678, 690, 699–701 (2001), the Supreme Court recognized serious constitutional concerns with indefinite civil immigration detention under § 1231(a)(6) and construed the statute to authorize detention only for a period reasonably necessary to secure removal. That liberty concern supports applying meaningful procedural safeguards here, where Petitioner challenges not removal itself but continued confinement based on an allegedly non-individualized custody decision.

90. Petitioner has been detained since July 18, 2025. Petitioner is detained at MDC Brooklyn. See Exhibit 2 ICE locator.

91. That confinement is civil in name but carceral in practical effect. As detention lengthens, the need for meaningful process increases.

92. Petitioner's private interest is amplified by the carceral nature of his confinement. The Second Circuit has recognized that civil immigration detention may impose restraints functionally indistinguishable from criminal incarceration, making the liberty interest especially weighty. *Velasco Lopez v. Decker*, 978 F.3d 842, 850–51 (2d Cir. 2020) (where the court emphasized that Velasco Lopez was incarcerated under conditions functionally comparable to criminal confinement).

B. The risk of erroneous deprivation is high, and additional safeguards have substantial value.

93. The second *Mathews* factor favors Petitioner because the February 2026 POCR was an internal ICE custody review, not a neutral bond hearing.

94. The risk of erroneous deprivation is heightened because 8 C.F.R. § 241.4(d) provides no administrative appeal from the custody decision. 8 C.F.R. § 241.4(d).

95. The February 2026 POCR did not provide Petitioner with a neutral adjudicator, did not require Respondents to bear the burden of proof, and did not provide adversarial testing of danger, flight risk, likelihood of compliance, practical removal prospects, or alternatives to detention.

96. **An internal ICE file review is not a substitute for a neutral bond hearing.** In *Perez Flores v. Bondi*, 2025 WL 1921748, at *6–8 (W.D.N.Y. 2025), the court concluded that a file custody review did not provide the detainee with an opportunity to appear before a neutral decisionmaker, contest evidence, or testify, and ordered a bond hearing with the Government bearing the clear-and-convincing burden.

97. The risk of error is especially acute because ICE's own records state "Criminal Record… None," yet the February 2026 decision allegedly relied on dangerousness language without identifying any criminal conviction, arrest, disciplinary infraction, violent act, or individualized evidence showing danger. See Exhibit 3.

98. The risk of error is further heightened because Petitioner submitted favorable evidence bearing directly on release, supervision, danger, flight risk, likelihood of compliance, and available conditions of supervision. See Exhibit 8.

99. In *Lu v. Genalo*, --- F.Supp.3d ---- (2025), 2025 WL 3512244, the court applied *Mathews* where the Government continued detention without an individualized determination before an impartial adjudicator that the detainee presented a danger or flight risk,

recognized that required procedural protections increase as confinement grows, and identified an individualized bond hearing as the obvious additional safeguard.

100. The probable value of additional safeguards is substantial. In *Black v. Decker*, 103 F.4th 133, 152–55 (2d Cir. 2024), the Second Circuit explained that an individualized bond hearing permits consideration of dangerousness and flight risk and adds meaningful protection against erroneous detention.

101. The risk of error is heightened because the POCR framework effectively placed the burden on Petitioner to prove that he should be released, rather than requiring Respondents to justify continued detention. That burden allocation is especially problematic where the issue is whether a person is not dangerous and not a flight risk. In *Black v. Decker*, the Second Circuit emphasized that after detention becomes prolonged, **due process requires the Government to justify continued detention by clear and convincing evidence**. 103 F.4th 133 (2d Cir. 2024). Where the government seeks to continue depriving a person of their liberty, it must bear the burden of proving the need for continued detention, otherwise the risk of erroneous deprivation would remain unacceptably high. *Id.* at 147-148.

102. Even if the February 2026 POCR were deemed adequate when conducted, Respondents' continued reliance on that stale custody decision without any later meaningful individualized review constitutes an independent due-process violation. As detention extends further beyond the initial post-order custody-review period, due process requires more—not less—meaningful review of whether detention remains justified.

103. Out-of-circuit authority also supports the principle that prolonged detention cannot rest on perfunctory file review or stale assumptions. In *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747 (M.D. Pa. 2004), the court held that prolonged post-order detention required meaningful consideration of release and that danger and flight-risk assessments must be made on a current, individualized basis. Here, Petitioner has no criminal history, ICE's own records state "Criminal Record... None," and the February 2026 decision did not identify any individualized evidence of danger.

104. ICE's failure to provide a timely and regulation-compliant 180-day Headquarters-level POCR is an independent regulatory and due-process defect. Under § 241.4, the 180-day review is not merely another field-office file review; it requires the further custody-review procedures assigned to the Headquarters post-order detention process, including consideration of the regulatory custody factors and a written decision explaining continued detention. In *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 390–97 (W.D.N.Y. 2009), the court found a serious regulatory defect where DHS/ICE failed to provide the required 180-day review and failed to show meaningful consideration of the § 241.4 release factors. In *Virani v. Huron*, No. 5:19-CV-499-FB, 2020 WL 1333172, at *9–12 (W.D. Tex. Mar. 23, 2020), the court allowed a procedural challenge to proceed where the record did not establish that ICE provided the 90-day and 180-day reviews required by § 241.4 or written decisions explaining the basis for continued detention. The same structural defect is present here: Petitioner has never received a Headquarters-level 180-day review that complies with § 241.4(c)(2), (i), and (k).

C. The Government's interests do not justify continued detention without meaningful process.

105. The third *Mathews* factor favors Petitioner because the Government's legitimate interests in ensuring appearance and protecting the community are served by individualized adjudication of danger, flight risk, and available conditions of supervision.

106. Congress expressly contemplated supervised release, not detention alone, for noncitizens not removed within the removal period. 8 U.S.C. § 1231(a)(3), (a)(6). Reasonable supervision conditions—including reporting, residence with a sponsor, appearance requirements, and written restrictions—therefore provide a statutory alternative to continued confinement.

107. In *Black v. Decker*, 103 F.4th 133, 153–55 (2d Cir. 2024), the Second Circuit explained that the Government has not articulated an interest in prolonged detention of noncitizens who are neither dangerous nor a risk of flight, and that individualized review promotes the Government's interest in avoiding unnecessary detention.

108. Requiring Respondents to justify continued detention through meaningful individualized process would serve, rather than undermine, the Government's asserted interests.

109. For these reasons, Petitioner's current confinement rests on a custody decision that is neither constitutionally adequate nor compliant with the governing regulations. Given the length of his detention and ICE's prior opportunity to cure the October 2025 defect and consider his extensive submissions, Petitioner respectfully submits that the

appropriate habeas remedy is immediate release under reasonable conditions of supervision.

110. Under the *Mathews* factors, Respondents' continued reliance on the February 2026 POCR and written continued-detention decision violates procedural due process. Petitioner seeks immediate release under reasonable conditions of supervision as the primary remedy. If the Court declines to order immediate release, Petitioner seeks a prompt *Black*-style bond hearing before a neutral decisionmaker.

111. The complete absence of any meaningful review since the February 2026 POCR constitutes an independent constitutional violation under the periodic review requirement. The only reviews of continued detention often occur through non-appealable, internal reviews performed by ICE itself, which place the burden on the petitioner, lack a neutral arbiter, and do not provide an in-person hearing. *Caceres v Joyce*, 813 F.Supp.3d 407 (S.D.N.Y. 2025). The Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period without a bond hearing; at some point, additional procedural protections become necessary. *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). The petitioner did not receive an individualized hearing, which violates Fifth Amendment Due Process rights. *Nevarez Jurado v. Freden*, 813 F.Supp.3d 376, 388 (W.D.N.Y. 2025). Although *Toussaint v. Garland*, 2022 WL 2354547 (S.D.N.Y. 2022), arose under § 1226(c), it supports the broader due-process principle that prolonged civil immigration detention requires meaningful periodic review and that confinement in jail-like conditions heightens the liberty interest at stake.

112. Because ICE has already had an opportunity to cure the October 2025 defect, because the February 2026 decision remains the only operative custody determination despite its non-compliance with § 241.4 and due process, and because no subsequent, meaningful review has occurred, Petitioner's continued detention lacks a lawful procedural foundation. In that posture, the proper habeas remedy is immediate release under reasonable supervision, with remand/new POCR or a Black-style hearing as alternative forms of relief.

COUNT TWO
Accardi / APA / Regulatory Claim: The February 2026 POCR Is the Current Operative Custody Decision and Does Not Comply with 8 C.F.R. § 241.4

113. This count challenges Respondents' continued reliance on the February 2026 written POCR decision as the current operative agency decision supporting Petitioner's detention.

114. Under 8 C.F.R. § 241.4(d), a custody-retention decision must be provided to the detained noncitizen, must briefly set forth the reasons for continued detention, and is not subject to administrative appeal from the district director's or Executive Associate Commissioner's custody decision.

115. Section 241.4(d)'s written-reasons requirement must be read together with § 241.4(e) and § 241.4(f). S.D.N.Y. decision at Exh. 1 recognized that § 241.4(e)(4)-(6) requires ICE to consider whether the detainee is likely to pose a threat to the community, likely to violate conditions of release, or likely to pose a significant flight risk. S.D.N.Y.

decision at Exh. 1 also recognized that § 241.4(f)(7) requires ICE to consider prior failures to appear for immigration proceedings.

116. Section 241.4 contemplates periodic, time-bound custody review rather than indefinite reliance on a stale custody decision. Out-of-circuit authority recognizes that failure to conduct required follow-up POCR review may violate procedural due process where continued detention rests on an outdated custody determination. In *Bonitto v. Bureau of Immig. Cust. Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008), the court explained that if a noncitizen is not released or removed after the initial POCR, the regulations require a second review after 180 days from the beginning of the removal period. The court held that DHS violated procedural due process by failing to provide the required 180-day POCR.

117. Out-of-circuit authority further confirms that § 241.4 custody reviews are not empty formalities. In *Bonitto v. Bureau of Immig. Cust. Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008), the court treated the post-order custody-review regulations as procedural safeguards adopted in response to *Zadvydas* and emphasized that detention beyond the removal period must comply with those procedures. The same reasoning supports requiring ICE to provide a custody decision that meaningfully addresses the evidence submitted and supplies a reasoned basis for continued detention. It should be noted that the petitioners in *Zadvydas* both had significant criminal records where Petitioner in this case does not have any.

118. ICE therefore was required to conduct a factor-based custody review, not merely issue a conclusory continued-detention notice. The written decision had to show a reasoned

connection between the record and the regulatory criteria governing danger, flight risk, likelihood of compliance, and conditions of supervision.

119. The February 2026 POCR was ICE's corrective opportunity to conduct a meaningful, individualized review after the October 2025 notice-to-counsel defect. S.D.N.Y. decision at Exh. 1 states that ICE conducted the new POCR after notice to Petitioner and counsel, and that counsel submitted documents in support of release.

120. The February 2026 decision nevertheless relied on immigration-history facts already known to ICE before detention began, including alleged unlawful entry, service of the Notice to Appear, failure to appear, the in absentia removal order, and arrest pursuant to that order. S.D.N.Y. decision at Exh. 1 describes those facts as the basis cited in the new POCR decision.

121. Petitioner does not contend that ICE was prohibited from considering immigration history or prior failures to appear. The defect is that ICE relied on those older immigration-history facts while failing to meaningfully address newer and directly relevant favorable evidence submitted by counsel.

122. That favorable evidence included sponsor evidence, community declarations, lack of criminal history, lack of disciplinary history, proposed supervision conditions, and other evidence bearing on danger, flight risk, likelihood of compliance, and alternatives to detention.

123. The non-individualized nature of the decision is especially apparent because ICE's own records state "Criminal Record… None." See Exhibit 4. Yet the February 2026 decision used dangerousness language without identifying any criminal conviction,

arrest, disciplinary infraction, violent conduct, or other individualized evidence showing that Petitioner poses a danger to the community.

124. *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747 (M.D. Pa. 2004) is especially instructive because it rejected continued detention based on a record that did not support current dangerousness or unmanageable flight risk. A § 241.4 decision must assess present danger, present flight risk, and whether conditions of supervision can address any asserted risk; it cannot simply rely on generalized custody language or past immigration-history facts without connecting them to the current record. In *Oyedeji*, the court rejected continued detention based on perfunctory custody review and stale assumptions about danger and flight risk. That reasoning applies with greater force here, where Petitioner alleges that ICE's own records state "Criminal Record... None," yet the February 2026 decision used dangerousness language without identifying any criminal conviction, arrest, disciplinary infraction, violent act, or other current individualized evidence of danger.

125. A custody decision that ignores the most probative evidence on the regulatory factors does not satisfy § 241.4(d)'s requirement that ICE briefly set forth the reasons for continued detention. It also fails to show that ICE actually applied the § 241.4(e) and § 241.4(f) factors to the record before it.

126. In *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368 (W.D.N.Y. 2009), the court found serious deficiencies where DHS/ICE custody decisions failed to show meaningful consideration of the § 241.4 release factors and where the record did not show that the agency actually applied those factors to the detainee's circumstances. The same

principle applies here: ICE's written decision cannot satisfy § 241.4 merely by reciting immigration-history facts while failing to address the sponsor evidence, community support, absence of criminal history, absence of disciplinary history, and proposed supervision conditions.

127. This claim does not ask the Court to reweigh the custody factors de novo. It challenges whether ICE followed its own regulatory framework and provided a reasoned written explanation sufficient to permit meaningful judicial review of the legality of continued detention.

128. Under *Accardi* principles, an agency must follow its own regulations when those regulations govern the process by which liberty is restrained. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). The *Accardi* doctrine is premised on fundamental notions of fair play underlying the concept of due process. *Id.* Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures, even if those procedures are more rigorous than otherwise required. *Id.*

129. To the extent APA-style review is available, the February 2026 decision is arbitrary and capricious because ICE failed to consider important aspects of the custody question, including Petitioner's lack of criminal history, detention record, sponsor evidence, community support, practical removal prospects, proposed conditions of supervision, and alternatives to detention. Under *Motor Vehicle Manufacturers*

Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983), agency action is arbitrary and capricious where the agency fails to consider an important aspect of the problem or offers an explanation that runs counter to the evidence before it.

130. ICE also failed to rationally connect the facts it cited to the decision to continue detention. Immigration-history facts may bear on flight risk, but the February 2026 decision did not explain why those facts outweighed the sponsor evidence, community declarations, absence of criminal history, absence of disciplinary history, and proposed supervision conditions.

131. Because the February 2026 decision is the current operative custody basis and fails to comply with § 241.4(d), § 241.4(e), § 241.4(f), Accardi principles, reasoned-decision-making requirements, and due process, Petitioner's continued detention is unlawful.

132. The absence of any later meaningful custody review also supports Petitioner's regulatory and due-process claims. In *Virani v. Huron*, No. 5:19-CV-499-FB, 2020 WL 1333172, (W.D. Tex. Mar. 23, 2020), the court rejected a *Zadvydas* theory but allowed the petitioner's procedural challenge to proceed where the record did not establish that ICE had provided the custody reviews and written explanation required by § 241.4. The same distinction matters here: Petitioner does not renew a standalone *Zadvydas* claim, but challenges Respondents' continued reliance on a stale and allegedly non-individualized POCR decision as the current custody basis. ICE's failure to conduct subsequent time-bound POCRs under 8 C.F.R. § 241.4(k), if established, would be an independent regulatory violation. The regulations

contemplate POCRs 'prior to the expiration of the removal period,' again about three months later, and annually thereafter or based on a material change in circumstance. In *Caceres v Joyce*, 813 F.Supp.3d 407 (S.D.N.Y. 2025), the government admitted failing to conduct required custodial reviews due to errors with ICE's electronic post-order custody review system, and the court treated that failure to follow its own regulations as part of the due-process and Accardi analysis. That out-of-circuit and district authority underscores that an agency's failure to conduct required internal reviews can be arbitrary and capricious and increase the risk of erroneous deprivation. Here, the 180 day POCR has not yet occurred yet Petitioner has been detained for over 290 days.

COUNT THREE
Alternative Remedies: *Black*-Style Bond Hearing or New Regulation-Compliant POCR

133. Immediate release under reasonable conditions of supervision remains the primary remedy because Respondents continue to detain Petitioner based on a written custody decision that allegedly lacks lawful, individualized, and reasoned support. If the Court declines to order immediate release, the next appropriate remedy is a prompt individualized bond hearing before a neutral decisionmaker within fourteen (14) days.

134. At that hearing, Respondents should bear the burden of proving by clear and convincing evidence that continued detention is necessary to serve a compelling

regulatory purpose and that no condition or combination of conditions can reasonably ensure Petitioner's appearance and community safety.

135. Petitioner has been detained now for 290 days yet he has not yet received any 180-day POCR. In *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747, 758 (S.D. Tex. 2008), the court held that DHS violated procedural due process by failing to provide the required 180-day POCR and conditionally granted habeas relief requiring a meaningful post-removal custody review. The same defect is alleged here: Petitioner has remained detained beyond the 180-day mark without the Headquarters-level review required by 8 C.F.R. § 241.4(c)(2), § 241.4(i), and § 241.4(k).

136. This is not merely a timing violation. It is also a decisionmaker violation. Once Petitioner was not released or removed within three months after the 90-day review, further custody authority transferred to Headquarters under § 241.4(c)(2). In *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 388–90 (W.D.N.Y. 2009), the court explained that the 180-day review requires HQPDU-level procedures, including a review panel, record review, a personal interview if release is not recommended, a written panel recommendation, and a written custody determination. Petitioner alleges that no such Headquarters-level review occurred here.

137. In *Black v. Decker*, 103 F.4th 133, 155–59 (2d Cir. 2024), the Second Circuit approved a bond-hearing remedy requiring the Government to justify continued detention by clear and convincing evidence and requiring consideration of ability to pay and alternatives to detention.

138. The neutral decisionmaker should consider less restrictive alternatives to detention, reasonable conditions of supervision, Petitioner's ability to pay any monetary bond, Petitioner's lack of criminal history, detention record, sponsor evidence, community support, practical removal prospects, and any specific evidence Respondents contend supports danger or flight risk.

139. Petitioner does not ask this Court to reweigh ICE's discretionary custody judgment. He challenges whether Respondents complied with mandatory custody-review procedures and whether continued detention rests on constitutionally adequate process. In *Virani v. Huron*, No. 5:19-CV-499-FB, 2020 WL 1333172, at *8–12 (W.D. Tex. Mar. 23, 2020), the court treated alleged noncompliance with § 241.4's 90-day and 180-day custody-review procedures as a procedural due-process issue where the record did not establish that the required reviews and written decisions had occurred.

140. In *Perez Flores v. Bondi*, 2025 WL 1921748, at *7–8 (W.D.N.Y. 2025), the court ordered a bond hearing within 14 days, required the Government to prove by clear and convincing evidence that continued detention was necessary, required consideration of less restrictive alternatives, and required consideration of ability to pay when setting any bond amount.

141. If the Court declines to order a bond hearing, the minimum remedy should be a new post-order custody review that fully complies with 8 C.F.R. § 241.4 and results in a reasoned written decision addressing the full record. 8 C.F.R. § 241.4(d).

142. A remand/new POCR remedy is especially appropriate because S.D.N.Y. decision at Exh. 1 did not separately adjudicate whether the February 2026 written decision, as

the current operative custody determination, warranted tailored prospective relief requiring ICE to issue a regulation-compliant written decision addressing the full record.

143. That new POCR should expressly address danger, flight risk, likelihood of compliance, sponsor evidence, community support, criminal-history information, detention record, practical removal prospects, proposed supervision conditions, alternatives to detention, and ICE's own notation that Petitioner has "Criminal Record… None."

COUNT FOUR
Preserved Alternative Argument: The BIA Stay and Non-Executability of Removal Support § 1226(a) Treatment or, at Minimum, Inform the Due-Process Analysis

144. Petitioner does not ask this Court to resolve this preserved argument unless it independently concludes that it is appropriate to revisit the statutory basis of detention in light of the current record. The principal grounds for relief in this petition are the regulatory and due-process defects in ICE's current custody determination under § 1231. Petitioner remains subject to a BIA administrative stay of removal, and Respondents continue to rely on the February 2026 POCR despite the alleged absence of a regulation-compliant Headquarters-level review. Those circumstances reinforce, as an alternative argument, why non-executability of removal should inform the statutory and constitutional analysis of his custody.

145. Petitioner assumes for purposes of this petition that 8 U.S.C. § 1231(a)(6) governs, consistent with the S.D.N.Y. decision at Exh. 1, and does not ask this Court to sit in appellate review of that ruling. The S.D.N.Y. decision concluded that ICE had statutory authority to continue detaining Petitioner under 8 U.S.C. § 1231(a)(6). Petitioner nevertheless preserves, in the alternative, the argument that the BIA administrative stay renders removal legally non-executable and therefore supports treatment of detention under 8 U.S.C. § 1226(a), or at minimum informs the due-process analysis governing continued civil detention. Under 8 C.F.R. § 1241.6(c), the Service must take reasonable steps to comply with a stay granted by an Immigration Judge or the Board. The argument is preserved because the prior proceeding did not grant Petitioner leave to withdraw (as he requested in ECF. Doc. 38 in the prior proceedings) or reframe the operative pleading after transfer and later custody developments, and because this petition principally challenges Respondents' current reliance on the February 2026 POCR and the absence of a regulation-compliant Headquarters-level review. Instead, that court denied the habeas outright. It is not the primary basis for relief in this petition, is not presented as a substitute for appeal from the S.D.N.Y. decision, and is raised only to preserve Petitioner's position that the legal non-executability of removal bears on the statutory and constitutional analysis of his custody.

146. The prior proceeding confirms why this argument is preserved rather than presented as the principal ground for relief here. The original petition asserted that Petitioner was detained under 8 U.S.C. § 1226(a) because the BIA had issued a stay of removal,

while the amended petition proceeded under 8 U.S.C. § 1231(a) and challenged the POCR process. The amended petition's focus on § 1231 was a function of the pleading posture at the time — decided by the counsel at the time, not a strategic concession — and that the court's denial of voluntary dismissal prevented Petitioner from ever presenting the § 1226(a) argument in a properly framed standalone posture before any court. This preserved alternative argument is not an abuse of the writ because it is not the primary claim for relief and is not presented as a substitute for appeal from the S.D.N.Y. decision. The operative claims here challenge Respondents' current reliance on the February 2026 POCR, the alleged failure to provide the required 180-day Headquarters-level review, and the lack of constitutionally adequate process supporting present detention. To the extent the Court concludes that the S.D.N.Y. decision already resolved the § 1226(a)/§ 1231 issue, Petitioner preserves that issue for appellate review and relies in this petition on the independent regulatory and due-process defects in the current custody basis. As explained above in the Relationship to Prior Judgment section, Petitioner understands that the statutory basis of detention was addressed in the S.D.N.Y. judgment and that any full reconsideration of that issue belongs in the appellate process. This Count is framed solely as a preserved alternative, consistent with abuse-of-the-writ principles in *Muniz v. United States*, 236 F.3d 122 (2d Cir. 2001), and is not advanced as the primary ground for relief.

147. Petitioner preserves the argument that, because the BIA administrative stay currently prevents execution of the removal order, his detention should be analyzed under 8 U.S.C. § 1226(a), or at minimum should receive the procedural protections applicable

to prolonged civil immigration detention under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1231(a). Petitioner recognizes that *Perez Flores v. Bondi* and *Diaz v. Genalo* involved judicial-review/ Second Circuit forbearance circumstances, rather than only a BIA administrative stay. *Perez Flores v. Bondi*, 2025 WL 1921748, at *3–5; *Diaz v. Genalo*, 2024 WL 4124756, at *3–4. Petitioner includes this argument only to preserve it and does not make it the primary basis for relief in this petition.

148. Petitioner is presently subject to a BIA administrative stay of removal issued after he appealed the denial of his motion to reopen and filed an emergency motion for stay. While that stay remains in effect, the Service must take reasonable steps to comply with it. 8 C.F.R. § 1241.6(c). Petitioner therefore preserves, in good faith, the argument that this legal impediment to removal supports § 1226(a) treatment or, at minimum, heightened procedural protection in the due-process analysis.

149. Section 1226(a) governs detention pending a decision on whether a noncitizen is to be removed and permits release on bond or conditional parole. *Black v. Decker*, 103 F.4th 133, 140–41 (2d Cir. 2024). Under the custody regulations, before a removal order becomes final, a respondent may seek immigration-judge review of custody and bond conditions. 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1003.19(a)–(f). Section 1231, by contrast, governs detention, release, and removal of noncitizens ordered removed, and it establishes a removal period that begins on the latest of specified dates, including the date of the court's final order where the removal order is judicially reviewed and a court orders a stay of removal. 8 U.S.C. § 1231(a)(1)(A)–(B).

150. A BIA stay is not merely practical forbearance; it is a legally operative stay. Under 8 C.F.R. § 1241.6(c), the Service must take all reasonable steps to comply with a stay granted by an Immigration Judge or the Board. That regulation supports Petitioner's preserved argument that, while the BIA stay remains in effect, removal is not presently executable. Petitioner does not ask this Court to treat that preserved argument as the lead theory of this petition; he raises it only as an alternative ground for preservation and as relevant context for the due-process analysis.

151. Petitioner acknowledges that the text of § 1231(a)(1)(B)(ii) expressly refers to judicial review and a court-ordered stay, and that S.D.N.Y. decision at Exh. 1 held that § 1231 governs Petitioner's detention notwithstanding the BIA administrative stay. Petitioner nevertheless preserves the argument that, where removal is not presently executable because a legal stay remains in place, the same non-executability concerns that animate the § 1226 line of cases support treating his detention as governed by § 1226(a), or at minimum applying the procedural protections associated with prolonged § 1226 detention. Petitioner does not ask this Court to hold that a BIA administrative stay is textually identical to the 'court-ordered stay' language in § 1231(a)(1)(B)(ii), or to depart from S.D.N.Y.'s reading of that provision in Exh. 1. He preserves only the argument that, as a functional matter, the legal non-executability of his removal while the BIA stay remains in effect informs both the statutory and due-process analysis of his detention.

152. In *Perez Flores v. Bondi*, 2025 WL 1921748, at 3–5, the court reasoned that § 1226 broadly governs detention of noncitizens who are not immediately deportable, that § 1231

assumes removal is imminent and certain, and that a substantive impediment to removal supports treatment of detention as governed by § 1226 rather than § 1231. In *Diaz v. Genalo*, 2024 WL 4124756, at 3–4, the court held that detention continued to be governed by § 1226 where removal was paused by the Second Circuit's forbearance policy. *Anariba v. Shanahan*, 190 F. Supp. 3d 344 (S.D.N.Y. 2016), further reflects that courts in this Circuit have treated the effect of non-executability and forbearance on the § 1226/§ 1231 line as a contested statutory issue. Petitioner recognizes that *Anariba* involved Second Circuit forbearance rather than a BIA administrative stay, and cites it only to preserve the broader non-executability argument.

153. Petitioner recognizes that *Perez Flores* and *Diaz* involved judicial-review and Second Circuit forbearance-policy circumstances, rather than only a BIA administrative stay. But the same functional concern is present here: while the BIA stay remains in effect, Respondents cannot execute the removal order, and Petitioner remains confined without the individualized bond hearing ordinarily available under § 1226(a). Petitioner raises this point only in the alternative and only to preserve the issue.

154. Even if this Court declines to revisit the statutory basis of detention and continues to treat Petitioner's detention as arising under § 1231(a)(6), the same non-executability concerns are relevant to the due-process analysis. When removal cannot lawfully be executed because of a BIA stay, continued detention under § 1231 is less clearly tied to the statute's removal-logistics purpose and more closely resembles the kind of prolonged civil confinement addressed in *Velasco Lopez*, 978 F.3d at 851–55, and *Black*, 103 F.4th at 155–59, where heightened procedural protections are required.

155. Petitioner has been detained since July 18, 2025, when ICE arrested him pursuant to the outstanding removal order, and he has remained in ICE custody since that date. As of May 4, 2026, Petitioner has been detained for more than 290 days, approximately nine and a half months, without any individualized bond hearing before a neutral adjudicator.

156. If § 1226(a) governs, Petitioner's continued detention without an individualized bond hearing violates the Due Process Clause. In *Velasco Lopez v. Decker*, 978 F.3d 842, 851–55 (2d Cir. 2020), the Second Circuit applied *Mathews v. Eldridge* to prolonged detention under § 1226(a) and approved relief requiring the Government to justify continued detention. In *Black v. Decker*, 103 F.4th 133, 155–59 (2d Cir. 2024), the Second Circuit held that where prolonged immigration detention requires a bond hearing, the Government must justify continued detention by clear and convincing evidence, and the decisionmaker must consider alternatives to detention and ability to pay.

157. Petitioner preserves his position that, if § 1226(a) is ultimately held to govern, his prolonged detention without a neutral bond hearing would independently violate the Due Process Clause under *Velasco Lopez* and *Black*. If this Court reaches and accepts the preserved § 1226(a) argument, Petitioner requests release under reasonable conditions or, in the alternative, a prompt individualized bond hearing before a neutral adjudicator at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary, and at which the adjudicator must consider alternatives to detention, conditions of supervision, and

Petitioner's ability to pay any monetary bond. *Black v. Decker*, 103 F.4th 133, 155–59 (2d Cir. 2024); *Perez Flores v. Bondi*, 2025 WL 1921748, at *7–8.

158. Petitioner recognizes that this preserved argument is limited. Section 241.4 provides that an alien who has filed a motion to reopen remains subject to the post-order custody-review framework unless the motion to reopen is granted. 8 C.F.R. § 241.4(b)(1). Petitioner therefore does not present the BIA-stay argument as the principal basis for relief in this petition. Rather, he preserves the argument that the legally operative BIA stay and resulting non-executability of removal support § 1226(a) treatment if that issue is reached on further review, or at minimum inform the due-process analysis of whether continued detention may rest on Rather, he preserves the argument that the legally operative BIA stay and resulting non-executability of removal support § 1226(a) treatment if that issue is reached on further review, or at minimum inform the due-process analysis of whether continued detention may rest on a non-neutral, non-appealable, and allegedly non-individualized custody decision.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this Petition;

B. Issue a writ of habeas corpus;

C. Hold that this petition is not barred as 'successive' or abusive because it challenges a later, discrete continued-detention decision and seeks narrow, prospective process-based relief directed to that decision, consistent with *Magwood v. Patterson*,

561 U.S. 320, 338–42 (2010); *Banister v. Davis*, 590 U.S. 504, 511 (2020); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643–45 (1998); *Muniz v. United States*, 236 F.3d 122, 127–28 (2d Cir. 2001); and *Chambers v. United States*, 106 F.3d 472, 475–76 (2d Cir. 1997);

D. Declare that Petitioner's continued detention is unlawful because ICE's February 2026 written continued-detention decision does not comply with 8 C.F.R. § 241.4, Accardi principles, reasoned-decisionmaking requirements, and the Due Process Clause;

E. Order Respondents to release Petitioner forthwith under reasonable conditions of supervision;

F. In the alternative, order Respondents, within [14] days, to provide Petitioner with an individualized bond hearing before a neutral decisionmaker, at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary and that no condition or combination of conditions can reasonably ensure Petitioner's appearance and community safety;

G. Order that any bond hearing include consideration of less restrictive alternatives to detention, reasonable conditions of supervision, Petitioner's ability to pay any monetary bond, Petitioner's lack of criminal history, detention record, sponsor evidence, community support, practical removal prospects, and any specific evidence Respondents contend supports danger or flight risk;

H. In the further alternative, if the Court determines that remand for a further custody review is more appropriate than immediate release, order Respondents, within [14] days, to conduct a new post-order custody review that fully complies with 8 C.F.R. § 241.4, including the 180-day Headquarters-level review procedures required by §

241.4(c)(2), § 241.4(i), and § 241.4(k), and that results in a reasoned written decision addressing the full record, including Petitioner's lack of criminal history, detention record, community ties, sponsor information, and any facts ICE contends support danger or flight risk;

I. Order Respondents to release Petitioner under reasonable conditions if they fail to provide the hearing or custody review required by this Court within the time set by the Court;

J. Order Respondents to file, within [7] days after any bond hearing or custody review ordered by this Court, a sworn compliance declaration attaching the bond order, custody-review decision, or other written determination issued in response to this Court's order;

K. Temporarily restrain and preliminarily enjoin Respondents, their officers, agents, employees, representatives, and all persons acting in concert with them from transferring Petitioner outside the Eastern District of New York during the pendency of this action, absent further order of this Court or at least [72 hours'] advance written notice to Petitioner's counsel and the Court, so as to preserve Petitioner's access to counsel, avoid practical prejudice, maintain the status quo, and preserve the Court's ability to grant effective relief;

L. Award Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, to the extent permitted by law; and

M. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Respectfully submitted this 4th day of May, 2026.

/s/ Karen Weinstock
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner and his prior attorneys and have reviewed various documents for Petitioner. Based on those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are correct to the best of my knowledge or belief pursuant to 28 U.S.C. § 2242.

This 4th day of May, 2026.

/s/ Karen Weinstock
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