

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

Victor Chila-Flores,

Petitioner,

- against -

ANTOINE FRAZIER, Acting Warden,
Metropolitan Detention Center; JUDITH
ALMODOVAR, New York Field Office
Director for U.S. Immigration and
Customs Enforcement; TODD
BLANCHE, Acting Attorney General of
the United States; MARKWAYNE
MULLIN, Secretary of Homeland
Security; and TODD M. LYONS, Acting
Director, U.S. Immigration and Customs
Enforcement,

Respondents.

Civil Action No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Petitioner Victor Chila-Flores is in the physical custody of Respondents at the Metropolitan Detention Center (“MDC”), Brooklyn. Petitioner has resided in the United States since 1999. On March 5, 2026, Immigration and Customs Enforcement (“ICE”) arrested Petitioner, who is Hispanic, while he was walking down the street in Brooklyn, New York. The ICE agents had a warrant for a different Hispanic man, but not for Petitioner. Petitioner now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) maintain he is subject to mandatory detention.

2. Petitioner is charged with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. DHS arrested Petitioner pursuant to DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Consistent with this policy, DHS then determined Petitioner to be categorically ineligible for release on bond.

4. In tandem with the new DHS policy, on September 5, 2025, the Board of Immigration Appeals (“BIA” or “Board”) issued a precedent decision, binding on all immigration judges, stripping immigration judges of authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board ruled that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner’s detention on this alleged basis violates the plain language of the Immigration and Nationality Act. According to well-established precedent, and as recently held by the Second Circuit, the discretionary statute 8 U.S.C. § 1226(a), rather than § 1225, applies to individuals, like Petitioner, “who are present in the United States, but charged as inadmissible for entering the country without

inspection and admission.” *Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026). Petitioner’s detention under § 1225(b)(2) violates the plain language of the Immigration and Nationality Act, as this provision does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond and requires an individualized determination upon arrest. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Petitioner’s confinement is unlawful, as confirmed by a cascade of decisions, including by the Second Circuit, that have emphatically rejected Respondents’ interpretation of Section 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release.

7. Petitioner also asks this Court to enjoin his transfer outside this District. *Local 1814, Intern. Longshoremen’s Ass’n, AFL-CIO v. New York Shipping Ass’n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) (“Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction.”) (citation modified); *Perez y Perez v. Noem*, 25 Civ. 4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

8. Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his release.

PARTIES

7. Petitioner is a resident of Queens, New York who has lived in the United States continuously since 1999. ICE arrested him on or about March 5, 2026. He is currently detained at the Metropolitan Detention Center, Brooklyn (the "MDC").

8. Respondent ANTOINE FRAZIER is named in his official capacity as the Acting Warden of the MDC.

9. Respondent JUDITH AMALDOVAR is named in her official capacity as the Field Office Director for ICE's New York Field Office. She is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.

10. Respondent TODD BLANCHE is named in his official capacity as the Acting Attorney General of the United States. He is responsible for the policies and operations of the Department of Justice.

11. Respondent MARKWAYNE MULLIN is named in his official capacity as the Secretary of the Department of Homeland Security (“DHS”). He directs each of the component agencies within DHS, including ICE.

12. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).

14. Federal district courts have jurisdiction to hear habeas corpus petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15. This Court has authority to grant declaratory and injunctive relief under 28 U.S.C. § 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is incarcerated at the MDC, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

17. Petitioner is not required to exhaust administrative remedies because doing so would be futile.

18. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

19. Such exhaustion may be excused when any of the following apply: “(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).

20. Petitioner's case meets every requirement. Not only will he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but intervening events have rendered administrative appeal futile and unable to provide a genuine opportunity for adequate relief.

21. On September 5, 2025, the Board decided *Matter of Yajure Hurtado*, a precedential decision finding that all noncitizens who, like Petitioner, have not been admitted to the United States are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). Thus, the BIA will be bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release. This is true although the overwhelming majority of district courts in the country that have heard a challenge to this reading of the statute have rejected it out of hand. Administrative appeal in Petitioner's case will therefore be futile.

STATEMENT OF FACTS

22. Petitioner has resided in New York City since 1999, when he was 16 years old. At the time of his arrest, he resided in Queens.

23. On March 5, 2026, Petitioner was arrested by ICE agents as he was walking down the street in Brooklyn. According to DHS's Form I-213, ICE agents had a warrant to arrest a different person with a Hispanic name when they

encountered Petitioner, who is also Hispanic. Despite not having an arrest warrant for Petitioner, ICE agents nonetheless placed Petitioner in custody. ICE agents then showed Petitioner a photograph of a person and asked Petitioner if he knew the person. After Petitioner confirmed he did not know the person in the photograph, ICE agents continued to detain Petitioner. The agents did not show Petitioner a warrant or paperwork for his arrest, nor did they explain why he had been arrested. Petitioner was brought to 26 Federal Plaza, transferred to Delaney Hall, then eventually transferred to MDC Brooklyn, where he remains detained. Upon information and belief, a warrant for Petitioner was created *after* his arrest.

24. DHS placed Petitioner in removal proceedings before the immigration court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present in the United States without being admitted or paroled. Petitioner is scheduled for a hearing before the immigration court on May 26, 2026.

25. Petitioner has supported himself primarily through construction jobs. Petitioner has no criminal record. He is neither a flight risk nor a danger to the community.

26. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

27. As a result, Petitioner remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody.

LEGAL FRAMEWORK

I. The Government's Statutory Authority to Detain Noncitizens

28. The two primary provisions of the United States Code that govern the detention of noncitizens prior to an order of removal are 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b).¹

29. Section 1226(a) governs the detention of most noncitizens who are already in the United States and subject to formal removal proceedings before an immigration court under 8 U.S.C. § 1229a. 8 U.S.C. § 1226(a); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (“[U.S. immigration law] authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).”) (emphasis added).

30. As the Supreme Court has made clear, “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings*, 583 U.S. at 287-89.

¹ Section 1226(c) concerns mandatory detention for noncitizens who have been convicted, or in some circumstances arrested, for certain criminal offenses, and is irrelevant to the instant petition, as Petitioner has no criminal history. Moreover, Respondents are not relying on Section 1226(c) to justify Petitioner's detention.

31. Detention under Section 1226(a) is discretionary, not mandatory; the government “may release the [noncitizen] on—(A) a bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]” 8 U.S.C. § 1226(a)(2)(A)–(B).

32. Under the Section 1226 framework, release is appropriate where a noncitizen “demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 493 (S.D.N.Y. 2025).

33. If, after individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

34. In contrast with Section 1226, which applies to “certain [noncitizens] *already in the country*,” *Jennings*, 583 U.S. at 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (*i.e.*, “applicants for admission”). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

35. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, “if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

36. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings*, 583 U.S. at 287-89.

37. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy² that rejected well-established understanding of the statutory framework and reversed decades of practice. The policy claims that all persons who entered

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

38. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

39. On April 28, 2026, the Second Circuit held that the BIA's position is "not what the law says." *Cunha*, 2026 WL 1146044 at *2. The "plain text" of the immigration statutes "makes clear that Section 1226(a) governs detention of noncitizens like Petitioner," and "Section 1225(b)(2)(A) does not apply to such noncitizens who are present in the United States after entering the country without inspection and admission" *Id.* In so holding, the Second Circuit affirmed the district court's grant of the writ of habeas corpus directing the release of a noncitizen improperly detained under § 1225(b)(2)(A).

40. Like the petitioner in *Cunha*, Petitioner is a noncitizen who has lived in the United States for over twenty years with no criminal record. The Second Circuit's precedent requires granting the writ of habeas corpus directing Respondents to immediately release Petitioner.

41. The result in *Cunha* follows the decisions of district courts in the majority of circuits that have confronted this issue and “ha[ve] concluded that the government’s [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.” *Rodriguez*, 2025 WL 2782499, at *1 (collecting 22 recent cases finding against the government’s interpretation).³ *But see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (holding that noncitizens in removal proceedings who have not been admitted are subject to detention under § 1225(b)(2)(A)); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) (same). As Judge Kaplan noted when considering this issue last November,

³ See, e.g., *Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz*, 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025); *Aceros v. Kaiser, et al.*, 25-CV-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government’s motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Choglllo Chafila v. Scott*, 2:25-CV-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

[T]he administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, must be detained [under Section 1225(b)(2)(A)] until their removal proceedings are completed [] 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. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant.

See Barco Mercado v. Francis, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citations omitted); *see also Sharifzoda v. Orange Cty. Jail*, No. 26-cv-2486 (KMK), 2026 WL 851378, at *1 n.2 (S.D.N.Y.) (disagreeing with *Buenrostro-Mendez* and *Avila* and noting that as “out-of-circuit cases” they are “not controlling”) (internal citation omitted).

42. As seen in *Cunha*, the majority of courts have rejected DHS's and EOIR's new interpretation because it defies the INA. The government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an “applicant for admission” as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States.” The term “seeking admission . . . necessarily implies some sort of present-tense action.” *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24,

2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates the rule of surplusage and negates the plain meaning of text.

43. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

44. Thus, for almost 30 years, all stakeholders in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable

here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government interpretation and practice to reject government’s new proposed interpretation of the law at issue). As the Second Circuit noted in *Cunha*, “the fact that the Executive Branch has for nearly three decades acted inconsistently with the newfound interpretation strongly counsels against adopting it.” 2026 WL 1146044, at *19.

45. The LRA amendments to § 1226 that occurred just last year, § 119, 139 Stat. 3, also confirm the widespread understanding that individuals not admitted or paroled are still detained pursuant to § 1226(a) if they were detained while already present in the United States. Furthermore, Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Any interpretation of § 1225(b)(2) that deems every noncitizen who was present without being admitted subject to mandatory detention would render § 1226(c)(1)(E) superfluous. *See Corley v. United States*, 556 U.S. 303, 314 (“[A] statute should be construed so

that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . .”) (internal citation omitted).

46. Petitioner was arrested after approximately twenty-seven years of continuous presence in the United States, not while “seeking admission.”

47. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. Petitioner’s detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires*. *Cunha*, 2026 WL 1146044, at *6.

II. Noncitizens’ Procedural Due Process Rights

48. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693 (citations omitted).

49. Stated simply, “while [DHS] might want to enforce this country’s immigration laws efficiently, it cannot do that at the expense of fairness and due process.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

50. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a “new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights.” *Velasquez v. Kurzdorfer*, 794 S. Supp. 3d 128, 149 (W.D.N.Y. 2025).

51. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) “the private interest that will be affected by the official action”; (ii) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

52. In light of a noncitizen’s due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen’s risk of flight and danger to the community. *See, e.g., Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 795 F. Supp. 3d at 495; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

53. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody constitute “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 795 F. Supp.3d at 492 (“[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment”) (quoting *Velasco Lopez*, 978 F.3d at 851) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

54. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment’s guarantee of due process requires notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that “notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]” *Id.*

55. For the third *Mathews* factor, “the Attorney General’s discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose.” *Velasco Lopez*, 978 F.3d at 854. The recognized governmental interests in immigration detention are confined to “ensuring the appearance of [noncitizens] at future immigration proceedings” and “preventing

danger to the community.” *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that the noncitizen is dangerous, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 795 F. Supp. 3d at 496; *Valdez*, 803 F. Supp. 3d 213, 218-19 (S.D.N.Y. 2025).

56. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. *See Contreras Maldonado v. Cabezas*, 2025 WL 2985256, at *5–6 (D.N.J. Oct. 23, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 496 (“Respondents’ ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights.”) (citations omitted); *Salgado Campana v. Rose*, No. 26-CV-199, 2026 WL 147433, at *3 (E.D. Pa. Jan. 20, 2026).

57. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of post-detention procedure can remedy that violation. *See, e.g., Contreras Maldonado*, 2025 WL 2985256, at *5–6 (noting, in granting habeas relief and ordering Petitioner’s release, that “Respondents’ post-hoc reasoning at the August 14, 2025 bond hearing does not rectify the lack of individualized determination at the time of arrest” and that “Petitioner’s due process rights were violated when she

was detained without an individualized determination under § 1226(a) and its implementing regulations.”); *Lopez Benitez*, 795 F. Supp. 3d at 497 (“Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate”); *see also* *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding a bond “hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause”) (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

58. As a result, courts throughout the country have ordered a noncitizen’s immediate release where, as here, their pre-detention due process rights have been violated.

59. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before his summary arrest walking down the street while the agents had a warrant for someone else. *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner’s first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT),

2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

60. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes that they intentionally decided to forego any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the U.S.

61. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once conditional release date had passed); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.") (citation omitted).

62. No procedural alternative to release can serve as an effective remedy. *See, e.g., Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge

would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.”); *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *8-9 (S.D.N.Y. Nov. 4, 2025) (ordering release); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 494 (E.D.N.Y. 2025) (same). Petitioner’s detention was unlawful from the moment he was detained and then taken into custody. Respondents afforded him no process before detention and have baselessly asserted authority to subject him to mandatory detention. Their violation is particularly egregious given that he has been in this country for approximately twenty-seven years and has no criminal history. Immediate release is the appropriate remedy.

63. Immediate release is also necessary to promote future compliance with the law. As noted, the federal courts have overwhelmingly held that mandatory detention under § 1225(b)(2) is unlawful. Even before the Second Circuit’s decision in *Cunha*, the courts of this district have so held. And yet, time and time again, the government displays open and contemptuous disregard of these rulings by arresting and detaining individuals without due process under § 1225(b)(2). When courts direct the government to comply with § 1226(a), detainees are often subject to sham hearings which ultimately result in the district court granting release several weeks later. *See Altamirano v. Cabezas*, No. 26-1168, 2026 WL 867135, at *4 (D.N.J. Mar. 25, 2026) (finding “the Court’s

confidence was misplaced” “that Respondents and the Immigration Court would provide Petitioner with a fair hearing”). The only hope for encouraging compliance with the law by the Government, and sending the message that federal court rulings must be taken seriously, is for this Court to order Petitioner’s immediate release.

64. In the alternative, Petitioner seeks, at a minimum, a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez*, 978 F.3d at 851. Although Petitioner submits this is insufficient to vindicate the immense due process violation inherent in his detention, short of release, a bond hearing is the most appropriate mechanism to mitigate his race-based continued unlawful confinement.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

65. Petitioner realleges and incorporates by reference each and every allegation contained above.

66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the interior of the United States.

67. Petitioner is detained under § 1226(a), as reflected by DHS’s own documents, binding law, and longstanding historical practice. Yet DHS contends,

following BIA caselaw, that Petitioner is subject to mandatory detention under § 1225(b)(2).

68. Section 1226(a) requires an individualized, pre-deprivation determination that a noncitizen whom Respondents intend to detain presents a danger or a flight risk.

69. ICE did not conduct an individualized determination of the propriety of Petition's detention before it detained him, and there were no indicators of flight risk or danger that precipitated his arrest.

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

SECOND CAUSE OF ACTION

VIOLATION OF THE FIFTH AMENDMENT RIGHT TO DUE PROCESS – PROCEDURAL DUE PROCESS

71. Petitioner realleges and incorporates by reference each and every allegation contained above.

72. 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.

73. 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.

74. Here, all three factors weigh in favor of finding that Respondents have violated Petitioner’s right to procedural due process by asserting unlawful authority to subject him to mandatory detention, by affording Petitioner no process upon detention, and by providing Petitioner no way to meaningfully contest his unlawful detention.

THIRD CAUSE OF ACTION

VIOLATION OF THE FIFTH AMENDMENT RIGHT TO DUE PROCESS — SUBSTANTIVE DUE PROCESS

75. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

76. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. Const.

amend. V. The only proper purposes for immigration detention are to protect against risk of flight or danger to the community.

77. Petitioner, who has lived in the United States for approximately 27 years and has no criminal history, is not a flight risk nor is he a danger to the community. Respondents' detention of Petitioner is therefore unlawful and unjustified. Accordingly, Petitioner's detention is punitive and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

78. Petitioner's detention without any individualized review of the need for his detention and without consideration of any risk of flight or danger to the community violates substantive due process.

FOURTH CAUSE OF ACTION

VIOLATION OF THE FOURTH AMENDMENT RIGHT TO BE FREED FROM UNLAWFUL STOP AND SEIZURE

79. Petitioner realleges and incorporates by reference each and every allegation contained above.

80. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized." U.S. Const. amend. IV.

81. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from stopping or detaining a person for questioning without reasonable suspicion that a person is a noncitizen unlawfully in the United States. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). The Government bears the burden of providing “specific and articulable facts” to support reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). The race of an individual cannot itself create reasonable suspicion, even for a temporary stop. *Brignoni-Ponce*, 422 U.S. at 887; *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 3, 222 L. Ed. 2d 1213 (2025) (Kavanaugh, J., concurring). Officers lacked reasonable suspicion to even approach Petitioner, and they certainly lacked probable cause to arrest him.

82. “[T]o establish reasonable suspicion, an officer cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law-abiding population.” *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006); *see also Vasquez Perdomo*, 146 S. Ct. at 3 (Kavanaugh, J., concurring) (“To be clear, apparent ethnicity alone cannot furnish reasonable suspicion[.]”).

83. Respondents had no basis to stop, search and detain Petitioner apart from his race. Rather, his detention occurred while the agents purportedly were looking for *someone else* of Hispanic descent that day. Petitioner’s detention and arrest were consistent with ICE’s recent practice of stopping, detaining,

questioning, and in some cases threatening Hispanic individuals based solely on their race. *Vasquez Perdomo*, 146 S. Ct. at 6-8 (Sotomayor, J., dissenting) (describing ICE’s “Operation At Large” in Los Angeles during which Hispanic individuals were indiscriminately targeted).

84. Petitioner’s detention violates the Fourth Amendment because he was arrested without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855, 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner’s Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination before re-arresting and detaining noncitizen in removal proceedings).

85. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado*, 2025 WL 2337099, at *18, *report and recommendation adopted*, 2025 WL 2349133 (ordering habeas petitioner’s “release from detention . . . granted because her Fourth Amendment rights were violated.”).

FIFTH CAUSE OF ACTION

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

86. Petitioner realleges and incorporates by reference each and every allegation contained above.

87. The Administrative Procedure Act permits a reviewing court, as relevant here, to “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law[.]”.

88. Agency action is arbitrary and capricious or an abuse of discretion where the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

89. Petitioner’s detention constitutes a final agency action reviewable under the APA because it marks the consummation of DHS’s decision-making process and determines his rights under law.

90. Petitioner’s detention violates the APA in multiple ways:

- a. Respondents' assertion of authority to subject Petitioner to mandatory detention under § 1225(b)(2)(A) is in excess of statutory authority or limitations, and is *ultra vires*;
 - b. Respondents' detention of Petitioner without the individualized determination as to danger and flight risk required by 8 U.S.C. § 1226(a) is an abuse of discretion and without observance of procedure required by law;
2. Respondents' detention of Petitioner therefore violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;⁴
3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act;

⁴ See *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). See also Order, *Ozturk v. Hyde*, No. 25-cv-374 at 68 (WKS) (D. Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

4. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, including electronic monitoring, and enjoining any re-detention under the immigration laws of the United States without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a);
5. In the alternative, conduct a constitutionally adequate, individualized bond hearing for the Petitioner within 7 days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that, at that hearing:
 - a. ICE bears the burden of establishing by clear and convincing evidence that continued detention is justified;
 - b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole, or electronic monitoring; and
 - c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.
6. Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

Dated: New York, NY
May 12, 2026

/s/ Sharon L. McCarthy
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Victor Chila-Flores

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

I am submitting this verification on behalf of Petitioner because I am an attorney for Petitioner in his immigration matters. I hereby verify that the statements made in the attached Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge based on discussions I have had with Petitioner. This verification is being made by counsel with permission of the Petitioner rather than by Petitioner himself due to the constraints placed upon counsel's access to Petitioner by his confinement.

Dated: May 12, 2026
New York, New York

Respectfully submitted,

/s/ Sunny Jo

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