UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Mahmoud Mohamed MANSOUR SHALABY,

Petitioners,

v.

Kenneth GENALO, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Markwayne MULLIN in his official capacity as Secretary of Homeland Security; Todd BLANCHE, in his official capacity as Atttorney General.

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Mahmoud Mansour Shalaby is a disabled asylum seeker who fled Egypt in fear for his life. Two years ago, Respondents released him from custody. He filed a timely asylum application and appeared for an interview in connection with his application, accompanied by his attorney and U.S.-citizen brother. But at that interview, he was summarily detained—despite the merits of his claim, his physical disability and need for ongoing treatment, and strong family ties. Because Petitioner's re-detention was unlawful, he brings this Petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer out of the New York City area.

PARTIES

1. Petitioner Mahmoud Mohamed Mansour Shalaby has resided in Queens, New York since 2024. He was detained yesterday and is currently held at Nassau County Jail in East Meadow, New York.

2. Respondent Kenneth Genalo is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

3. Respondent Markwayne Mullin is named in his official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Mullin's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

4. Respondent Todd Blanche is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, he is the custodian of Petitioner. Respondent Bondi's office is

located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on September 25, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 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

7. Venue is proper in this Court because Petitioner is detained by Respondents in East Meadow, New York at the time of filing.

SPECIFIC FACTS ABOUT PETITIONER

8. Petitioner Mahmoud Mansour Shalaby is an asylum seeker from Egypt. He fled to the U.S. after facing serious persecution in his home country.

9. In October 2024, Mr. Shalaby entered the U.S. In the course of entering, he broke both his legs. He was hospitalized as a result and continues to suffer from mobility issues. He has difficulty walking and cannot stand for long periods of time. According to his family, he requires further treatment that he has had difficulty accessing. He also suffers from headaches and dizziness.

10. Mr. Shalaby resides in Queens, New York. His brother is a U.S. citizen.

11. Respondents did not place Mr. Shalaby into removal proceedings following his entry in to the U.S. Instead, Mr. Shalaby retained private immigration counsel and filed an asylum application with U.S. Citizenship & Immigration Services (USCIS). He also applied for employment authorization.

12. Mr. Shalaby was scheduled for an interview on his application at the USCIS asylum office on June 2, 2026. He went with his attorney and his brother. A USCIS official asked Petitioner some questions and then said they could not do the interview that day and would need to reschedule. She then asked them to wait. After 20 minutes, they were taken to a room where they waited for another half an hour before an ICE officer arrived and arrested him.

13. When he arrived with his attorney, he was told he would not be able to complete his interview that day without a supervisor. He waited for approximately half an hour more and then was brought into a room where ICE officers stated he was being arrested.

14. Respondents now frequently arrest individuals like Mr. Shalaby at their asylum interviews to meet their arrest quotas. *See* Arya Sundaram, *'Sign of the times': NY asylum-seekers arrested at routine immigration appointments*, GOTHAMIST, Jan. 20, 2026, https://gothamist.com/news/sign-of-the-times-ny-asylum-seekers-arrested-at-routine-immigration-appointments.

15. Respondents then placed Mr. Shalaby into removal proceedings.

16. On information and belief, Mr. Shalaby has been arrested twice in the U.S. The first case stemmed from driving a new car that his U.S.-citizen brother had bought the same day. The charge was dismissed before arraignment. In the second, Mr. Shalaby was arrested for driving a motor bike with a license plate that had one letter obscured by a piece of trash. The case was charged as a misdemeanor and remains pending. Mr. Shalaby was released and maintains his innocence.

17. Mr. Shalaby called his family today from a location in Nassau County, which on information and belief is the Nassau County Jail in East Meadow, New York.

LEGAL FRAMEWORK

18. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For individuals who are "arriving" in the U.S. or who are subject to expedited removal because they have been present under two years and meet certain other requirements, mandatory detention is authorized by 8 U.S.C. § 1225(b). For individuals who are in removal proceedings following entry without inspection and who are not subject to mandatory detention based on criminal history, detention is normally authorized by 8 U.S.C. § 1226(a). Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a).

19. DHS makes initial custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *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").

20. Beginning in mid-2025, Respondents began to systematically deny access to individualized custody review procedures and bond to noncitizens who had entered the country without inspection—even those who have resided in the U.S. for years. In May 2025, the Board of Immigration Appeals held that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently

placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

21. Then in September, the Board broadened this rule yet further in *Matter of Yajure Furtado*, 29 I&N Dec. 216 (BIA 2025).

22. Thereafter, hundreds if not thousands of courts in this district and others held that the mandatory detention of longtime U.S. residents under this reinterpretation of statutes was unlawful and unconstitutional.

23. In *Barbosa da Cunha v. Freden*, the Second Circuit rejected that argument and held that 1226(a) "plainly applies to noncitizens, like Petitioner, who are present in the United States, but charged as inadmissible for entering the country without inspection and admission." 175 F.4th 61, 73 (2d Cir. 2026). However, since then immigration courts have continued to find they lack jurisdiction to grant bond to noncitizens apprehended at the U.S. border, pursuant to *Matter of Q. Li* and other arguments advanced by the Department of Homeland Security. *See, e.g., Matter of N-A-G-C-*, 29 I&N Dec. 662, 663 (BIA 2026).

24. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil immigration confinement.

See Valdez v. Joyce, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

25. As to process, at a minimum, in the context of revocation of civil release, "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

26. Despite these baseline requirements, Respondents now regularly re-detain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931 at *3 (S.D.N.Y. July 13, 2025) (ordering the immediate release of a petitioner redetained by ICE because she "poses a risk of flight or a danger to the community" and her sudden redetention violated her right to due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 at *4 (S.D.N.Y. June 18, 2025) (ordering the release of petitioner redetained after an immigration court hearing and concluding "Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.").

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

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

28. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

29. Petitioner's detention violates the both the substantive and procedural components of the Due Process Clause. Petitioner was determined not to pose danger or flight risk when he was released from custody in October 2024. There is no reason to now conclude Petitioner poses a danger or flight risk. He was not accorded sufficient process prior to his sudden re-detention by ICE on June 3, 2026. Petitioner did not receive notice or an opportunity to be heard as to whether a change in custody status was warranted. *See Rodriguez-Acurio v. Almodovar,* 811 F. Supp. 3d 274, 316 (E.D.N.Y. 2025), *appeal dismissed,* No. 26-219, 2026 WL 1208948 (2d Cir. Feb. 25, 2026) (finding a due process violation where noncitizen was redetained at a USCIS Asylum Office); *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment"); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Valdez*, 2025 WL 1707737, at *4.

30. Respondents will also now contend that Petitioner is ineligible for bond under *Matter of Yajure Furtado*, 29 I&N Dec. 216 (BIA 2025).

31. But that determination is contradicted by Respondents' prior determinations in Petitioner's case and the text and structure of the detention statutes. Mandatory detention without access to a bond hearing violates Petitioner's right to due process.

32. Respondents' actions also violate Petitioner's right to substantive due process as there is no reason to conclude he poses either a danger or a flight risk and therefore no lawful basis to detain him. *See Zadvydas*, 533 U.S. at 690–91 (noting that immigration detention aims to ensure the detainee's appearance at immigration proceedings and protect the community from dangerous individuals).

33. Respondents' actions violate Petitioner's right to due process.

COUNT TWO
VIOLATION OF THE FOURTH AMENDMENT

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

35. Petitioner was detained by federal immigration officials as removable when he entered the United States. The government exercised its discretion under the Immigration and Nationality Act to release Petitioner while he litigated that charge in immigration court. At the time of Petitioners' arrest, he had been living at liberty pursuant to that determination by federal immigration authorities.

36. The government lacked reliable information of changed or exigent circumstances that would justify Petitioner's arrest on the same basis after federal immigration authorities previously decided they could pursue his claims for immigration relief at liberty.

37. Petitioner's re-arrest based solely on the fact that he may be subject to removal proceedings—which was also the predicate for her initial detention— is unreasonable and therefore violates the Fourth Amendment.

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

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

39. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious. 5 U.S.C. § 706(2)(A).

40. An action is an abuse of discretion if 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." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

41. Respondents' decision to detain Petitioner as part of their coordinated campaign and policy of detaining individuals attending immigration court, USCIS appointments, or routine ICE check-ins, irrespective of the individual circumstances in their case, and then to subject them to mandatory detention, is arbitrary and capricious.

COUNT FOUR
RELEASE PENDING ADJUDICATION

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

43. Pursuant to *Mapp v. Reno*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d 221, 226 (2d Cir. 2001).

44. Petitioner presents substantial claims. Moreover, extraordinary circumstances are also present, given the unjustified nature of his current confinement.

45. Petitioner requests immediate release pending adjudication of the instant petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Petitioner's transfer out of the New York City area;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the Immigration and Nationality Act and implementing regulations;
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody without restraints on their liberty beyond those that existed prior to his redetention on or about June 3, 2026;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act,

5 U.S.C. § 504 and 28 U.S.C. § 2412; and

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

Dated: June 4, 2026

/s/ Paige Austin
Paige Austin
Harold A. Solis
Make the Road New York
301 Grove St.
Brooklyn, NY 11237
Tel. (718) 418-7690
Paige.austin@maketheroadny.org
Harold.solis@maketheroadny.org

CERTIFICATE OF SERVICE

I certify that on June 4, 2026, I electronically filed the attached the foregoing Petition for Writ of Habeas Corpus and accompanying Exhibits with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Paige Austin
Paige Austin
Make the Road New York
301 Grove St.
Brooklyn, NY
Tel.: (718) 418-7690 ext. 4139
Fax: (866) 420-9169
Email: paige.austin@maketheroadny.org

Attorney for Petitioner