UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CRISTIAN FERNANDO ROMERO-ARRIAZA,

Petitioner,

-against-

Raul MALDONADO, JR., 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 David VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 1:26-cv-3488

EMERGENCY PETITION
FOR WRIT OF HABEAS CORPUS

Petitioner Cristian Fernando Romero-Arriaza ("Mr. Arriaza") brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Mr. Arriaza alleges in support of his petition:

PRELIMINARY STATEMENT

1. Mr. Arriaza, age 32, who has been living in the U.S. continuously for almost eleven (11) years, is in the physical custody of Respondents at the Metropolitan Detention Center, Brooklyn, New York ("**MDC**"). He has been in Respondents' custody since April 7, 2026 when he was arrested by U.S. Immigration and Customs Enforcement ("**ICE**") agents at a routine probation appearance at the Sullivan County Probation Office in Monticello, New York.

2. This petition is especially urgent because Mr. Arriaza has begun experiencing serious health issues, including sharp chest pain, heart palpitations, shortness of breath and related problems. Although he has received some medical attention at MDC, his poor health has continued.

3. Moreover, Mr. Arriaza provides crucial financial support for his 11-year-old son's welfare, housing and education, and Mr. Arriaza now faces prolonged detention that would unlawfully cause him and his family tremendous hardship.

4. Mr. Arriaza' detention is unlawful because the Department of Homeland Security ("**DHS**") and the Executive Office of Immigration Review ("**EOIR**") have wrongfully decided that he is subject to mandatory detention.

5. Mr. Arriaza is being charged with and detained pursuant to, *inter alia,* having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

6. Based on this allegation, DHS has detained him without opportunity for release, consistent with a new DHS policy issued on July 8, 2025. This provision instructed all 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 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

7. Furthermore, on September 5, 2025, the Board of Immigration Appeals (the "**Board**") issued a decision, binding on all immigration judges, holding that an immigration judge has no 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) ("**Hurtado**"). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *Id.*

8. In *da Cunha v. Freden*, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026) ("***Cuhna***"), however, the Second Circuit, like the majority of judges in this district and elsewhere, stated unequivocally that §1225(b)(2)(A) *does not* apply to noncitizens who, like Mr. Arriaza, have been living in the United States for years after entering without inspection and admission. Rather, 8 U.S.C. § 1226(a) governs detention of these noncitizens, including Mr. Arriaza. *See Cuhna*, 2026 WL 1146044, at *2. Under §1226(a), Mr. Arriaza's release is appropriate if "such release would not pose a danger to property or person" and he is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

9. In short, Mr. Arriaza's arrest and imprisonment were unlawful—as determined by Second Circuit in *Cuhna* and the multitude of decisions, including within this district, squarely rejecting Respondents' interpretation of Section 1225(b)(2). Accordingly, Mr. Arriaza brings this petition seeking immediate and unconditional release.

10. Mr. Arriaza also asks this Court to enjoin his transfer outside this district. *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" [edited for clarity]); *Tariq v. United States Department of Homeland Security, et al.*, 2025 WL 3687764, at *1 (E.D.N.Y. December 19, 2015 (enjoining respondents from "moving Petitioner to a location outside this District, the Southern District of New York, or the District of New Jersey, absent further order of this Court") (citing *1814, Intern. Longshoremen's Ass'n*).

11. Alternatively, Mr. Arriaza 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 his detention violates federal law and (2) order his release.

PARTIES

12. Mr. Arriaza, who is alleged to be a citizen of Honduras, has been in immigration detention since April 7, 2026.

13. Respondent Raul Maldonado, Jr. is named in his official capacity as the Warden of the Metropolitan Detention Center.

14. Respondent Judith Almovodar is named in her official capacity as the Field Office Director for ICE's New York Field Office.

15. 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 DOJ.

16. Respondent Markwayne Mullin is named in his official capacity as the Secretary of DHS. He directs each of the component agencies within DHS, including ICE.

17. Respondent David Venturella 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 AND VENUE

18. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1346(a)(2) (U.S. Government Defendant); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).

19. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens to challenge the lawfulness 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).

20. 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. Mr. Arriaza is incarcerated at the Metropolitan Detention Center, 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

21. Mr. Arriaza is not required to exhaust administrative remedies because doing so would be futile.

22. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *See Joseph v. Decker*, 2018

WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018); *Quintanilla v. Decker*, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021).

23. 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).

24. Mr. Arriaza' case meets all four of these requirements. It is self-evident that Mr. Arriaza's unlawful detention constitutes current and ongoing irreparable injury that only judicial relief can cure. Because his arrest and detention pursuant to 8 U.S.C. § 1252(b) were unlawful and indiscriminate, his case raises substantial constitutional questions, including Respondents' violation of Mr. Arriaza's rights under the Due Process Clause, U.S. Const. Amend. V.

25. Moreover, Mr. Arriaza has no meaningful opportunity for relief given the Board of Immigration Appeals' decision in *Hurtado*, which held that immigration judges lack authority to consider bond requests from individuals who entered the United States without admission. 29 I. & N. Dec. 216 (BIA 2025). As a result, immigration judges are required to deem Mr. Arriaza subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release, even though he is neither a flight risk nor a danger to the community.

STATEMENT OF FACTS

26. Petitioner Cristian Fernando Romero Arriaza is a 32-year old alleged national of Honduras who has lived in the United States since at least 2015, when he 21 years old.

27. On or around December 2015, Mr. Arriaza was detained by DHS in or around McAllen, Texas.

28. Since 2015 Mr. Arriaza has been gainfully employed in the construction industry. He has an Individual Taxpayer Identification Number and has paid taxes.

29. Mr. Arriaza has been making regular payments for his 11-year-old son's housing, education and upbringing, upon which his son depends.

30. In May and December 2025, Mr. Arriaza was arrested for DWI infractions. Those two charges were collapsed into a single conviction plea for a first-offense DWI misdemeanor with 3-years' probation. He has attended regularly his probation appointments.

31. On April 7, 2026, Mr. Arriaza attended a routine probation check-in at the Sullivan County Probation Department in Monticello, New York. It was at that probation appointment that ICE arrested and detained him.

32. Pursuant to a Notice to Appear, dated April 7, 2026, ICE detained and charged Mr. Arriaza with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

33. He has been detained at the Metropolitan Detention Center since April 76, 2026.

34. Mr. Arriaza has a pending application for asylum relief.

35. Pursuant to *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), an immigration judge is unable to consider Mr. Arriaza' bond request.

36. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL BACKGROUND

A. Immigration Detention Framework

37. The Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952) (codified as amended at 8 U.S.C. § 1101) (the "INA") prescribes three basic forms of detention for the majority of noncitizens placed in removal proceedings.

38. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1226(a). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

39. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission, as described at 8 U.S.C. § 1225(b)(2).

40. Lastly, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

41. This case concerns the detention provisions in Sections 1226(a) and 1225(b)(2).

42. Detention under § 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).20.

43. 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"); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025) (same).

44. If, after an 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 an immigration judge. 8 C.F.R. §1003.19.

45. In contrast with Section 1226, which applies to "certain [noncitizens] *already in the country*," *Jennings v. Rodriguez*, 583 U.S.281, 289 (2018) (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (*i.e.*, "applicants for admission"). Section 1225(b) mandates detention for those noncitizens subject to it and they are not eligible to be considered for release.

46. For decades after the enactment of the Section 1226(a) and Section 1225(b)(2) detention provisions, those individuals who had entered the country without inspection but were already in the United States at the time of an ICE arrest were detained under § 1226(a), and not §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.

47. On July 8, 2025, ICE, "in coordination with" the Department of Justice ["DOJ"], rejected that well-established understanding of the statutory framework and reversed decades of practice.[1] Its revised agency rule mandates detention for all noncitizens who entered the United States without inspection, including those who have resided in the United States for months, years and even decades, deeming them subject to the provisions of § 1225(b)(2)(A).

48. On September 5, 2025, the Board of Immigration Appeals adopted this same position in *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), where it 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 immigration judge bond hearings.

49. Since Respondents adopted their new policy, "over ninety percent of district court judges" have "rejected the government's position." *Cunha*, 2026 WL 1146044, at *4. *See also Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1303 (W.D. Wash. 2025) (collecting cases and noting that innumerable district courts "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.");[2] *see also Hyppolite v. Noem*, 806 F. Supp 3d. 474, 484 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to an Article III court that has

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[1] *Available at* www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[2] *See, e.g., Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025); *Aceros, v. Kaiser, et al.*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 805 F. Supp. 3d 1112 (D. Nev. 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271 (D. Mass. 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134 (D. Minn. 2025); *Velasquez Salazar v. Dedos*, 806 F. Supp. 3d 1231 (D.N.M. 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025); *Jimenez v. FCI Berlin, Warden,* 799 F. Supp. 3d 59 (D.N.H. 2025); *Choglo Chafla v. Scott*, 804 F. Supp. 3d 247 (D. Me. 2025).

adopted its expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, 2025 WL 2829434. *7 (E.D.N.Y. Oct. 5, 2025) (same).

50. A majority of courts have rejected DHS'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) who is 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." As the Second Circuit explained, "[t]he the term 'seeking' is in the present participle form, which expresses present action." *Cuhna*, 2026 WL 1146044, at *6. 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. *Id.* at *6.

51. 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 an alien who is not lawfully in the United States." *Rodriguez*, 779 F. Supp. 3d 1239, 1260 (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after Illegal Immigration Reform and Immigrant Responsibility Act of 1996's enactment, the former Immigration and Naturalization Service and the EOIR issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered

without inspection) *will be eligible for bond and bond redetermination*." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)[emph.added].

52. Thus, for almost 30 years, all participants 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).

53. The 2025 Lanken Riley Act ["LRA"] amendments to § 1226 also confirmed the widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. In the LRA, Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the enumerated crimes.

54. Mr. Arriaza was arrested after almost eleven (11) years of continuous presence in the United States, not while "seeking admission."

55. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to Mr. Arriaza, who has already entered and has been residing in the United States at the

time he was apprehended. Rather, his detention is governed by § 1226(a); his continued detention under Section 1225(b)(2) is in excess of statutory authority and *ultra vires.*

B. Noncitizens' Procedural Due Process Rights

56. 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 v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

57. 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." *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

58. 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*, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

59. 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*, 424 U.S. 319, 348 (1976) 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).

60. 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 Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

61. Mr. Arriaza's unlawful detention tilts the first *Matthews* factor in his favor. Freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). *See also Velasco Lopez*, 978 F.3d at 851 (freedom from imprisonment "is the most significant liberty interest there is") (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).

62. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some 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 a manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

63. 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 government interests in immigration

detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. These risks cannot be presumed. Absent evidence in the record that a noncitizen is dangerous, and in situations where the noncitizen has reliably appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

64. Indeed, 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. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation [petitioner] 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 v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. Jul. 13, 2025) (finding 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). This is particularly clear where, as here, Mr. Arriaza is not a flight risk or a danger to the community.

65. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination

regarding Mr. Arriaza. *See, e.g., Cuy Comes v. DeLeon*, 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*, 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

66. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes their failure to conduct, under Section 1226, an individualized evaluation as to whether Mr. Arriaza's circumstances would warrant detention. Section 1226 provides which provides the sole lawful authority for detaining individuals residing in the U.S., and its requirements were deliberately sidestepped.

C. Immediate Release Is the Proper Remedy for Respondents' Lawless Detention of Petitioner

67. The Supreme Court has underscored that "it is clear not only from the language of [18 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ that the essence of the 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 condition release date had passed). *See also Munaf v. Geren*, 533 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release") (citation omitted).

68. No procedural alternative to release can serve as an effective remedy. *See, e.g., Rodriguez-Acurio v. Almovadar*, 2025 WL 331420, 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 for relief because the detention without

adequate pre-deprivation procedures has already been carried out"); *Tumba v. Francis*, 2025 WL 2829511, at *8-9 (S.D.N.Y. Nov. 4, 2025) (ordering release); *Hyppolite*, 2025 WL 2829511, at *16 (same). Mr. Arriaza's detention was unlawful from the moment he was detained and then taken into custody. Respondents offered no process before detention and have asserted flawed and unlawful authority to subject him to mandatory detention.

69. In the alternative, Mr. Arriaza seeks at minimum a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d at 851. Although he submits this would be insufficient to vindicate the immense due-process violation inherent in his detention, a bond hearing is a mechanism to mitigate his continued unlawful confinement.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

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

70. Mr. Arriaza realleges and incorporates by reference each allegation contained above.

71. 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.

72. Mr. Arriaza is subject to the particular, individualized requirements of § 1226(a), as reflected by DHS's own documents, controlling law, including the Second Circuits decision in *Cuhna*, and longstanding historical practice. Yet DHS contends, following BIA caselaw, that he is subject to mandatory detention under § 1225(b)(2).

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

74. ICE did not conduct, prior to its detention of Mr. Arriaza, an individualized determination that would support a decision to detain him. Indeed, no such basis could be found Mr. Arriaza is neither a flight-risk nor a danger to the community.

75. Respondents' wrongful application of §1225(b)(2) to Mr. Arriaza unlawfully mandates his continued detention and violates the INA.

SECOND CAUSE OF ACTION

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS, U.S. CONST. AMEND. V

76. Mr. Arriaza realleges and incorporates by reference each allegation contained above.

77. 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.

78. 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.

79. Here, consideration of these three factors supports a determination that Respondents have violated Mr. Arriaza's right to procedural due process, by: asserting unlawful authority to subject him to mandatory detention; by denying him access to due process upon detention; and failing to provide meaningful procedure by which he might contest his unlawful detention.

THIRD CAUSE OF ACTION

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

80. Mr. Arriaza realleges and incorporates by reference each allegation contained above.

81. The Administrative Procedure Act permits a reviewing court, as relevant here, to "hold unlawful and set aside agency, findings, and conclusions found to be—(A) arbitrary and 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[.]" 5 U.S.C § 706(2).

82. 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).

83. Mr. Arriaza's detention is final agency action reviewable under the APA because it marks the culmination of DHS's decision-making process and determines his rights under law.

84. Mr. Arriaza's detention violates the APA in several ways:

a. Respondents' assertion of authority to subject Mr. Arriaza to mandatory detention under § 1225(b)(2)(A) exceeds statutory authority or limitations, and is *ultra vires*;

b. Respondents' detention of Mr. Arriaza without benefit of 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.

85. Respondents' detention of Mr. Arriaza therefore violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Mr. Arriaza respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Mr. Arriaza 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;

3. Issue a writ of habeas corpus directing Respondents to immediately release Mr. Arriaza 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, pending a final determination in his removal proceedings;

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for Mr. Arriaza within fourteen days;

5. 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. the government must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
b. the government is enjoined from denying bond to Mr. Arriaza in any subsequent proceeding on basis that he must be detained pursuant to Section 1225(b), absent a controlling change in the law;
c. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring;
d. The adjudicator must meaningfully consider Mr. Arriaza' ability to pay if setting a monetary bond.

6. Award Mr. Arriaza 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.

Respectfully Submitted,

Dated: June 10, 2026
New York, New York

/s/ Mathew B. West
Mathew B. West

8 Bedford Street
New York, New York 10014
mathewwest1@gmail.com
(917) 797-4995

Pro Bono Co- Counsel for Mr. Arriaza

Mary C. Rothwell
Mary C. Rothwell

30 East 72nd Street
New York, New York 10021
davismcr@me.com
212-8100-0345

Pro Bono Co- Counsel for Mr. Arriaza

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

I, Mary C. Rothwell, am submitting this verification on behalf of the Petitioner as an attorney for Petitioner. I, or my co-counsel, have discussed with Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 10, 2026
New York, New York

Mary C. Rothwell

Mary C. Rothwell

30 East 72nd Street
New York, New York 10021
davismcr@me.com
212-810-0345

Pro Bono Co-Counsel for Mr. Arriaza