

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAMON ALBERTO PEREZ VASQUEZ

()

Petitioner,

v.

RAUL MALDONADO, JR., in his official capacity as Warden of Brooklyn Metropolitan Detention Center; TODD LYONS, Acting Director, ICE; MARKWAYNE MULLIN, in his official capacity as Secretary of DHS; TODD BLANCHE, in his official capacity as Acting U.S. Attorney General; and KENNETH GENALO, in his official capacity as Director of ICE New York City Field Office

Respondents.

Case No: 26-3494

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2241**

INTRODUCTION

1. Petitioner Ramon Alberto Perez Vasquez (“Petitioner” or “Mr. Perez”) is a fifty-year-old father of three US citizen children ages 18, 13, and 11, and the husband of a US citizen spouse. He is a citizen of the Dominican Republic who has lived in the United States since he entered without inspection in 2003 and was ordered deported *in absentia* later that year. He later departed the US and re-entered with inspection on advance parole. Other than his entry without inspection, in his more than twenty years in this country, Mr. Perez has never been arrested or otherwise accused of a crime. Mr. Perez has been married to his wife, Widalys Munoz-Perez (“Ms. Perez”), for 16 years, and he is his family’s sole breadwinner.
2. Ms. Perez filed an I-130 on her husband’s behalf on March 29, 2024. Mr. and Ms. Perez attended their I-130 interview on March 16, 2026. Their I-130 was approved on the spot.

Despite this, when the interview ended, ICE agents who had been waiting on the scene took Mr. Perez into custody and eventually remanded him to the Metropolitan Detention Center (“MDC”) in Brooklyn, New York.

3. Upon taking Mr. Perez into custody, DHS served him with a Notice to Appear and placed him into removal proceedings before Immigration Judge Charles Conroy (the “IJ”) at the 201 Varick Street Immigration Court in New York City. Despite Mr. Perez’s deep family and community ties, his long history of employment and payment of taxes, the absence of any criminal record, and his immediate eligibility for permanent residence based on his approved spousal I-130, Mr. Perez has been detained at MDC ever since.
4. Through counsel, Mr. Perez applied twice for bond before the IJ. The IJ denied both applications, finding that Mr. Perez was subject to 8 USC § 1225(b)(2)(A) (“§ 1225(b)(2)(A)” or “INA § 235(b)(2)(A)”), and that therefore, detention was mandatory under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).
5. Mr. Perez’s attorneys filed an application for adjustment of status based on his approved I-130 with the IJ on May 5, 2026. The IJ, having determined that Mr. Perez was eligible to adjust status, heard the application during a Merits hearing three days later. However, he pretermitted the application on a single basis: as required, counsel had included Ms. Perez’s 2025 IRS 1040 as an attachment to her I-864 Affidavit of Support – the form used to demonstrate that an adjustment applicant will not become a public charge – but omitted to include related income tax schedules (despite their availability). It bears noting that, because Mr. and Ms. Perez were relying on joint sponsors who had also submitted I-864s with sufficient to demonstrate that they could and would support Mr. Perez if necessary, there was no factual basis for a public charge finding; the omission of tax

schedules was not material. Nevertheless, because applicable regulations require that an I-864 include a 1040 and all schedules, the application was technically deficient. In pretermittin, the IJ refused either to provide Mr. Perez the opportunity to cure the deficiency, or to otherwise proceed with the application.

6. The tortuous procedural history (described in detail below) notwithstanding, a few salient facts bear emphasis:

a. Mr. Perez was detained despite a nearly spotless, 20 year+ history in the United States, and despite being the beneficiary of an approved I-130, and therefore being immediately eligible for adjustment of status;

b. the immigration judge's finding that Mr. Perez was subject to mandatory detention under *Matter of Yajure-Hurtado* was erroneous, and based in part on a legal premise that has since been overruled by the Second Circuit in *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1827404 (2d Cir. Apr. 28, 2026) ("*Barbosa da Cunha*");

c. Mr. Perez's order of removal is not final, is currently pending on appeal, and is overwhelmingly likely to be remanded. More specifically, the immigration judge's decision to pretermitt Mr. Perez's adjustment application solely based on the absence of tax return schedules was either the direct result of judicial error, or of ineffective assistance of counsel. There does not appear to be any legal support for the premise that an otherwise meritorious application to adjust status can be pretermitted solely based on a missing (and non-material) tax schedule, with no opportunity to cure the deficiency. But even if pretermittion was an appropriate exercise of the IJ's discretion, counsel's failure to include 1040 schedules constituted manifest ineffective assistance insofar as it involved a failure to observe explicit filing requirements; and prejudicial insofar as this failure was the sole basis for the IJ's decision to pretermitt. Mr. Perez has appealed the IJ's decision to the Board of Immigration Appeals; and counsel is in the process of preparing a motion to reopen or remand based on ineffective assistance of counsel. Thus, not only is Mr. Perez's removal order not final; it appears overwhelmingly likely under the circumstances that his otherwise meritorious adjustment application will still be adjudicated.

7. In short, Mr. Perez has approvable I-485 and every conceivable incentive to appear at all future immigration court hearings. He is neither a flight risk nor a danger to his community.

8. Mr. Perez's detention is unlawful for two independent reasons. First, it violates the Immigration and Nationality Act. Perez is not "seeking admission" at the border and is not an "arriving alien." The mandatory detention provisions of 8 U.S.C. § 1225(b) do not apply to him. His detention, if authorized at all, arises under 8 U.S.C. § 1226(a), which affords him the right to an individualized custody determination and a bond hearing — neither of which he has received. Second, his arrest and continued detention without any individualized assessment, without notice, and without a hearing violates the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act. The only appropriate remedy is his immediate release.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1).
11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper because Petitioner is detained at the Buffalo Federal Detention Facility, located at 80 29th St, Brooklyn, NY 11232, which is within the jurisdiction of this

District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) (citing *Ex Parte Endo*, 323 U.S. 283 (1944)).

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events giving rise to Petitioner's claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

16. Petitioner Ramon Alberto Perez Vasquez ("Petitioner" or "Mr. Perez") is a fifty-year-old father of three US citizen children ages 18, 13, and 11, and the husband of a US citizen spouse, to whom he has been married for more than 16 years. He is a citizen of the Dominican Republic who has lived in the United States since he entered without inspection in 2003. He is the beneficiary of an approved I-130 filed by his wife, and an I-485, which was pretermitted by the immigration court on May 8, 2026; the immigration

court's order premitting the application and mandating removal is currently pending on appeal. Mr. Perez has been in ICE custody ever since he was arrested by ICE following his successful I-130 interview on March 16, 2026.

17. Respondent Raul Maldonado, Jr. is the Warden of Brooklyn Metropolitan Detention Center. Respondent Maldonado has direct control over Petitioner's detention. He is sued in his official capacity.
18. Respondent Todd M. Lyons is the Acting Director of ICE. He is sued in his official capacity.
19. Respondent Kenneth Genalo is the Director of ICE's New York City Field Office. Respondent Genalo has direct control over Petitioner's detention. He is sued in his official capacity.
20. Respondent Markwayne Mullin is Secretary of the Department of Homeland Security and oversees ICE. He is sued in his official capacity.
21. Respondent Todd Blanche is the Acting Attorney General of the United States. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

22. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. Any requirement that Mr. Perez further exhaust administrative remedies would be inappropriate insofar as: (1) available remedies provide no genuine opportunity for adequate relief, as bond is statutorily unavailable to immigrants designated as arriving aliens under § 1225(b), and DHS, by its actions, has demonstrated that it is unwilling to grant parole; (2) irreparable injury — namely, an

ongoing deprivation of his liberty — will likely occur without immediate relief; and (3) Petitioner has raised substantial constitutional questions relating to his due process rights. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

STATEMENT OF FACTS

A. Mr. Perez's Immigration History

23. Mr. Perez first arrived at the Canadian-Vermont border near on or about April 30, 2003, entering without inspection. He was taken into custody shortly after arrival and subsequently released on bond.¹ He was ordered removed *in absentia* on June 10, 2003, by the Hartford, Connecticut immigration court.
24. Mr. Perez and his United States Citizen wife, Widalys Perez, were married on August 5, 2009. They have three United States citizen children: [REDACTED] Perez, born [REDACTED]; [REDACTED] Perez, born [REDACTED]; and [REDACTED] Perez, born [REDACTED]. *See* Marriage and Birth Certificates, attached as Ex. A.
25. Mr. Perez eventually sought an attorney to resolve his immigration situation. After the attorney filed a Violence Against Women Act petition on his behalf,² Mr. Perez departed the United States on advance parole and reentered, with inspection, on May 25, 2021. *See* I-94, dated May 25, 2021, attached as Ex. B. The family later hired new counsel, the Law Office of Ben Arai, and in 2024 Ms. Perez filed an I-130 on her husband's behalf. Mr.

¹ He was charged with misdemeanor illegal entry under 8 U.S.C. 1325 and received a sentence of 4 days in prison.

² Mr. Perez's advance parole approval was obtained by an attorney by the name of Owolabi Salis, who was disbarred in November 2022 for defrauding hundreds of clients through repeated, fraudulent immigration applications, and later indicted for practicing law without a license. <https://www.reuters.com/legal/legalindustry/new-york-lawyer-accused-duping-hundreds-immigrants-disbarred-2022-11-29/> Mr. Perez was one of Mr. Salis's victims, although he did have a meritorious basis for a VAWA petition — namely that he had suffered abuse at the hands of his spouse, who had been struggling with mental illness for some time. The couple later reconciled and submitted a marriage-based I-130.

and Ms. Perez successfully underwent an I-130 interview on March 16, 2026. *See* I-130 Approval Notice, attached as Ex. C.

26. Immediately following the interview, ICE Officers who had been waiting outside the USCIS office arrested Mr. Perez and took him into custody.
27. Respondents provided Mr. Perez with no notice or opportunity to be heard prior to arresting and detaining him, and, as described below, Respondents have offered him no meaningful opportunity to be heard or challenge his detention since detaining him. Upon information and belief, ICE did not conduct any individualized assessment of Petitioner's flight risk or dangerousness before detaining him. ICE did not consider his more than twenty years of continuous residence in the United States, his meritorious I-130 and eligibility for a green card, his lack of criminal history, his attempts to resolve his immigration situation, or his family and employment ties.

B. Mr. Perez's Removal Proceedings

28. Following Mr. Perez's detention, DHS issued a new Notice to Appear, commencing removal proceedings at the 201 Varick Street Immigration Court before Immigration Judge Charles Conroy. *See* Notice to Appear, attached as Ex. D. DHS took the position – and the IJ agreed – that notwithstanding Mr. Perez's 2003 order of removal, he was not subject to a final order of removal, and removal proceedings should move forward. *See* email from DHS to previous counsel, and IJ Order Denying Respondent's Motion as Moot, attached as Ex. E.
29. While removal proceedings were ongoing, Mr. Perez filed two separate applications for bond. The IJ denied the first motion on the grounds that “respondent is subject to INA section 235(b)(2)(A). *See Matter of Yajure-Hurtado*, 29 I&M Dec. 216 (BIA 2025).” He

denied the second motion on the ground that “advanced [*sic*] parole is not an admission that negates INA section 235(b)(2)(A).” *See* Orders of the Immigration Judge dated April 1, 2026 and April 9, 2026 respectively, attached as Ex. F.

30. Counsel filed an I-485 on Mr. Perez’s behalf with the court on May 5, 2026. As the beneficiary of an approved I-130 who had entered the United States with inspection, was not subject to any grounds of inadmissibility, and was not the subject of an order of removal, Mr. Perez was eligible to adjust status to that of lawful permanent resident. On May 8, 2026, the Court held an individual hearing. In reviewing the application filed three days earlier, the Court found that it suffered from a single deficiency: the petitioner’s I-864 form, the purpose of which is to establish that the applicant will not become a public charge, did not include tax return schedules with her 2025 tax returns; counsel had represented to Ms. Perez that 1040s alone would be sufficient. It bears noting that public charge issue itself was likely not in dispute: two joint sponsors filed separate, complete I-864s with all required attachments, demonstrating sufficient income to guarantee that they could support Mr. Perez if needed. Nevertheless, because applicable regulations technically do require a sponsor to include “all schedules” (*see* 8 CFR § 213a.2(c)(2)(i)(A)), the IJ pretermitted the case. This was the sole ground for the IJ’s decision. *See* IJ Decision dated May 8, 2026, attached as Ex. G.

31. Five days later, counsel filed a motion styled a motion to reconsider (excerpt attached at Ex. H), this time including the omitted required materials. The motion offered no explanation for counsel’s failure to submit Ms. Perez’s tax schedules. The IJ denied the motion, finding:

The respondent has filed the present motion with evidence attached. Therefore, the Court is also considering the present motion as a motion to reopen. However, the respondent has put forth no arguments why the new evidence was not previously available or could not have been acquired. A review of the 2025 tax return transcript shows the 2025 tax return was filed on 02/11/2026, such that it was available well before the callup date for all documents. Therefore, the motion to reopen is also denied.

May 28 order of the Immigration Judge, attached as Ex. I; *see also* 8 CFR § 1003.23

(providing that a motion to reconsider must state any errors of fact or law by the judge, and that a motion to reopen “will not be granted unless the immigration judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.”).

32. Undersigned counsel was retained shortly thereafter, and on June 3, 2026, filed a timely Notice of Appeal before the Board of Immigration Appeals. The bases for the appeal include that pretermission under these circumstances was procedurally inappropriate and thus *ultra vires*. *See* Receipt notice dated June 3, 2026, attached as Ex. J.

33. In addition, present counsel is in the process of preparing a motion to reopen based on ineffective assistance of prior counsel – namely that previous counsel’s failure to include required materials in the application she submitted on her client’s behalf was both indisputably ineffective, insofar as counsel failed to observe mandatory filing requirements, and prejudicial insofar as such failure was the sole reason the application was pretermitted; in addition, previous counsel compounded her error by filing a motion to reconsider (or reopen) that failed to comply with the mandatory regulatory requirements of such a motion. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (mandating reopening where counsel’s performance was ineffective, and where such ineffectiveness was prejudicial).

LEGAL FRAMEWORK

A. The INA's Distinct Detention Provisions: § 1225(b) vs. § 1226(a)

34. The INA contains distinct detention provisions. Section 1225(b) generally requires mandatory detention of certain noncitizens “arriving” to the United States, known as “arriving aliens.” 8 U.S.C. § 1225(b)(2)(A). Section 1225(b) provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” *Id.* A noncitizen detained under § 1225(b)(2) may be released only if paroled “for urgent humanitarian reasons or significant public benefit” pursuant to 8 U.S.C. § 1182(d)(5)(A). *See Gomes v. Hyde*, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (*quoting Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).
35. Applicable regulations defining “arriving alien” specifically provide that individuals who were “paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien’s departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under [§ 1225(b)(1)(A)(i)].”
36. The INA defines the term “admitted” to mean, “with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).
37. Mandatory detention under § 1225 is premised on an immigration officer’s determination that a noncitizen is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025).

38. In *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1827404 *15 (2d Cir. Apr. 28, 2026), the Second Circuit addressed the definitions of “applicant for admission” and “seeking admission.” As to the former term, the Court explained that it was bound by the explicit statutory language: “‘applicant for admission’ is defined by statute to mean any noncitizen who is present in the United States and has not been admitted, or is arriving in the United States.” *Id.* quoting § 1225(a)(1). Further, the Court noted that “admission” means “the lawful entry of the alien into the United States after inspection and authorization.” *Barbosa da Cunha* at *15, quoting 8 U.S.C. § 1101(a)(13)(A). The Court construed the statutorily undefined term “entry” its normal meaning: “‘coming from outside.” *Barbosa da Cunha* at *15, quoting *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).
39. The *Barbosa da Cunha* court went on to hold that the term “‘alien seeking admission,’ ... it therefore refers to a noncitizen who is seeking admission right now, not one who sought admission in the past but no longer is.” *Id.* at 22. Other courts in this circuit and elsewhere have examined the term “seeking admission” and found that the use of a present participle, “seeking,” “necessarily implies some sort of present-tense action.” *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)). “Seeking admission” means presently trying to enter the United States at or near the border. *See J.G.O. v. Francis*, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (noting that “seeking admission” would “require[] [a noncitizen] . . . to want to go into the country”); *Alvarez Ortiz v. Freden*, 808 F.Supp.3d 579, 592 (W.D.N.Y. Nov. 4, 2025) (observing that “seeking admission” “must refer to seeking physical entry at the border, not the legal right to enter”). *See also Leng May Ma v.*

Barber, 357 U.S. 185, 187 (1958) (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after entry, irrespective of its legality.”).

40. “[A]lthough § 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking admission’ to the United States, it cannot, according to its ordinary meaning, apply to [a petitioner], because he has already been residing in the United States for several years.” *Lopez Benitez*, 795 F. Supp. 3d at 489.

41. By contrast, § 1226(a) allows the Attorney General to either detain or release a noncitizen undergoing removal proceedings. 8 U.S.C. § 1226(a); accord *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) (explaining that under § 1226(a), a noncitizen may either be “detained” or “allowed to reside in this country” pending removal proceedings). As the Supreme Court has noted, the discretionary detention framework under § 1226 has long been the “default rule” for noncitizens “already in the country” during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). DHS may release a noncitizen on bond or conditional parole after an ICE officer has assessed their flight risk and danger to the community and has determined release is appropriate. 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If the officer decides to detain the noncitizen, the detainee may request a bond hearing to appeal the officer’s decision to an immigration judge. 8 C.F.R. § 1003.19(a).

42. The overwhelming majority of courts, both within the Eastern District of New York and beyond, have concluded that where a petitioner’s arrest was not a continuation of the initial border encounter, but instead an independent decision to detain the individual after the expiration of parole, the resulting detention arises under 8 U.S.C. § 1226. To suggest

that Petitioner “is still on the threshold of entry into this country, based on his re-entry into the United States through parole which expired over seven years ago, stretches the legal fiction beyond reason.” *Ivonin v. Rhoney*, 2026 WL 199283, at *4 (W.D.N.Y. Jan. 26, 2026); *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025).

B. Detention Without Individualized Assessment Violates Due Process

43. Even when noncitizens are subject to mandatory detention under § 1225, courts in this Circuit have routinely held that: (a) such individuals have a protected liberty interest in remaining out of custody after release; (b) revocation of that liberty without basic notice and an opportunity to be heard violates procedural due process; and (c) § 1225(b) does not authorize such re-detention or strip them of due process protections. *See Savane*, 2025 WL 2774452, at 6–9 (“Even assuming that § 1225 applies, as Respondents contend, Petitioner’s due process rights were violated because Respondents did not afford Petitioner any process at all before detaining him”); *Munoz Materano v. Arteta*, 804 F.Supp.3d 395, 417 (S.D.N.Y. Sept. 12, 2025) (citations removed) (“Even if, arguendo, ICE had the statutory, discretionary authority to detain [petitioner] pursuant to § 1225, the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is.”); *Kelly v. Almodovar*, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (“In light of the undisputed facts, there is no doubt that 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”).

44. In *Rodriguez-Acurio*, the court held that detention was unlawful “from its inception” because the petitioner was detained under the wrong statute and without the notice or process required. *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). The court ordered immediate release.
45. “The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review.” *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020).

C. The Due Process Clause Applies to All Persons in the United States

46. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. The Due Process Clause applies to “all persons within the United States,” regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “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.” *Id.* at 690.
47. Although Congress has broad power over immigration, civil immigration detention is subject to constitutional limits. Civil detention must bear a reasonable relation to its purposes, such as preventing flight or protecting the community. *See id.* at 690–92; *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018).
48. The Administrative Procedure Act prohibits agency action that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious 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)).

D. The Habeas Statute Affords Broad Equitable Remedies

49. The “equitable and flexible nature of habeas relief” affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution.

Velasco Lopez v. Decker, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an equitable remedy”). The habeas statute “does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted.”

Carafas v. LaVallee, 391 U.S. 234, 238 (1968).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA: Detention Under the Wrong Statutory Provision

50. The allegations in the above paragraphs are re-alleged and incorporated herein.

51. Petitioner’s current detention results from this executive administration’s abrupt change in position that the mandatory detention provisions of § 1225(b)(2) apply to longtime residents of the United States. Until last year, DHS had historically applied § 1226 and its discretionary release provisions to the vast majority of noncitizens who, like Petitioner, had long resided in this country. Bucking decades of statutory interpretation and practice, the government now advocates for an expansive interpretation of the mandatory detention provisions of § 1225(b)(2) to justify the detention of all noncitizens like Petitioner

without lawful status, who entered the country without documentation, regardless of whether that individual has long resided in the United States.

52. Section 1225(b) authorizes mandatory detention of noncitizens who are “applicants for admission” and “seeking admission” at the border. 8 U.S.C. § 1225(b)(2)(A). Petitioner is not an “applicant for admission”. He was paroled into the United States pursuant to a grant of advance parole on May 25, 2021, was inspected and paroled by CBP, and was released into the community. He was not detained at entry. For more than four years following his entry, Petitioner lived openly in the United States, sought to resolve his immigration situation, worked, paid taxes, and complied with all immigration requirements. DHS did not revoke his parole, allege any violation of its terms, or detain him during this period. For similar reasons, Petitioner is not “seeking admission” – he was already admitted within the meaning of the statute. *See Barbosa da Cunha*.
53. Petitioner was taken into custody only on March 16, 2026 — more than four years after his parole. His detention is therefore not incident to entry and is not authorized by § 1225(b). As the court explained in *Lopez Benitez*, “[a]lthough § 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking admission’ to the United States, it cannot, according to its ordinary meaning, apply to [a petitioner], because he has already been residing in the United States for several years.” 795 F. Supp. 3d at 489.
54. “To claim that [Petitioner] was never really ‘here’ thus requires a much greater sleight of hand than is provided for in those prior cases.” *Rincon v. Hyde*, 2025 WL 3122784, at *6 (D. Mass. Nov. 7, 2025). Petitioner’s more than four years of continuous residence in the United States, his employment, and his deep ties to this country distinguish him from noncitizens who are truly “seeking admission” at the border. He is not at the “threshold of

initial entry.” *Rodriguez-Acurio*, 2025 WL 3314420, at 26 (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020)).

55. Moreover, § 1182(d)(5)(A) requires that Petitioner’s case “continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A). “Any other applicant for admission residing in the United States for more than three years” — let alone more than four years — “would be detained under Section 1226.” *Rodriguez-Acurio*, 2025 WL 3314420, at *18.
56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA. Petitioner was released into the interior of the United States, has continuously resided in the United States for over four years, has developed deep community ties, legally worked, and paid taxes, and therefore cannot be analogized to a person detained at the port of entry or stopped within 25 yards of the border.
57. Petitioner’s detention pending removal under § 1226(a) is discretionary, and noncitizens detained under the statute are afforded an initial determination as to eligibility for release and the opportunity for a bond hearing upon detention. 8 C.F.R. § 1236.1(d)(1). Here, Petitioner was afforded neither of these guarantees in violation of § 1226(a).

COUNT TWO

Violation of the Fifth Amendment’s Due Process Clause (Detention Without Pre-Deprivation Hearing or Individualized Assessment)

58. The allegations in the above paragraphs are re-alleged and incorporated herein.
59. Petitioner has a protected liberty interest in remaining at liberty. He has resided in the United States for more than twenty years, has worked consistently, paid taxes, and has deep ties to his community.

60. The Fifth Amendment requires that before the government deprives a person of liberty, it must provide at least basic procedural protections, including notice of the reasons for the deprivation and a meaningful opportunity to be heard. *See Zadvydas*, 533 U.S. at 693–94; *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).
61. ICE detained Petitioner on March 16, 2026, without prior written notice, without any explanation of why detention was warranted, and without affording him any opportunity to contest his detention before or shortly after it occurred.
62. Upon information and belief, ICE did not conduct any individualized assessment of Petitioner’s flight risk or dangerousness before detaining him. ICE did not consider his years of continuous residence in the United States, his approved I-130, his eligibility for adjustment of status, his lack of criminal history, or his family and employment ties.
63. By detaining Petitioner without notice, without an individualized assessment, and without a meaningful opportunity to be heard, ICE violated Petitioner’s procedural due process rights under the Fifth Amendment.

A. Application of the *Mathews v. Eldridge* Factors

64. “In the Second Circuit, the balancing test laid out by the Supreme Court in *Mathews v. Eldridge* . . . applies when determining the ‘adequacy of process in the context of civil immigration confinement.’” *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025). The *Mathews* factors are: (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.” *Mathews*, 424 U.S. at 335.

i. Petitioner’s Liberty Interest

65. Petitioner’s private interest “is the most significant liberty interest there is — the interest in being free from imprisonment.” *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (quoting *Velasco Lopez*, 978 F.3d at 851). The Buffalo Federal Detention Facility, “while perhaps not akin to a maximum-security prison,” is not “meaningfully different from at least a low-security penal institution for criminal detention.” *Wilson v. Barr*, 2020 WL 13554798, at *7 (W.D.N.Y. May 1, 2020).

66. Petitioner’s liberty interest is even more heightened because the deprivation of his liberty is not the result of any criminal adjudication. *See Alvarez Ortiz*, 808 F.Supp.3d at 599 (“[I]t is important to recognize that the deprivation of liberty that individuals detained under section 1226(a) experience is ‘not the result of a criminal adjudication.’ This, too, heightens [the petitioner’s] interest in his liberty.”).

ii. Risk of Erroneous Deprivation

67. The risk of erroneous deprivation is particularly high here. Petitioner’s detention without any individualized assessment such as any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest. This is underscored by Respondents’ detention of Petitioner under a newly-imposed interpretation of § 1225(b)(2) “that runs counter to precedent and decades of past practice.” *Alvarez Ortiz*, 808 F.Supp.3d at 600. In other words, even though Petitioner was paroled into the country more than four years ago, Respondents took him into custody without any change in circumstances or individualized assessment and an

opportunity to be heard, including a pre-deprivation bond hearing, and have held him in custody without any bond hearing or due process.

iii. Government's Interests

68. The government's discretion to detain individuals under § 1226(a) "'is valid where it advances a legitimate governmental purpose,' such as 'ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.'" *Lopez Benitez*, 795 F. Supp. 3d at 495-96. But the record does not demonstrate that Petitioner presents those risks. While Petitioner has, with his entry without inspection and his failure to appear in immigration court leading to an *in absentia* order of removal, run afoul of the immigration laws, those acts are confined to 2003. He has lived in the United States, worked, paid his taxes, raised a family, and never had a single criminal issue in the years since. No individualized assessment would support Petitioner's detention. Rather, if it were not for a policy change reversing decades of past practice, Petitioner would not be detained.
69. While providing a bond hearing or other form of due process prior to depriving someone of their liberty poses some degree of "fiscal and administrative burden," *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335), the government has not provided any evidence that the burden would be a significant one. Moreover, Petitioner's prolonged detention has already caused — and will inevitably continue to cause — far greater expenses than the cost of conducting a bond hearing, thereby placing an unnecessary burden on the public fisc.
70. Accordingly, the arrest and continued detention of the Petitioner by ICE violated the Due Process Clause of the Fifth Amendment. Rather than exercising the individualized

discretion required by law, ICE effectuated Petitioner's detention pursuant to a blanket policy — without notice, without an individualized assessment, and without affording Petitioner any opportunity to be heard. Because Petitioner possessed a protected liberty interest in his continued release from custody, the Government's failure to provide even the most basic procedural safeguards resulted in an unconstitutional deprivation of liberty. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

71. Due process requires the government to bear the burden of proving by clear and convincing evidence that detention is justified at a bond hearing under § 1226(a). *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019); *see also Onosamba-Ohindo v. Searls*, 678 F. Supp. 3d 364, 374 n.2 (W.D.N.Y. 2023). Under the circumstances here, “[g]iven the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents’ failure to show a significant interest in [his] detention,” ongoing detention of Petitioner “with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond,” violates due process. *Lopez Benitez*, 795 F. Supp. 3d at 501.

COUNT THREE
Violation of the Fifth Amendment’s Due Process Clause
(Arbitrary and Excessive Detention)

72. The allegations in the above paragraphs are re-alleged and incorporated herein.
73. Civil detention must be strictly limited and may not be excessive in relation to its purported non-punitive purposes. *See Zadvydas*, 533 U.S. at 690–92.
74. ICE’s detention of Petitioner bears no reasonable relationship to any legitimate governmental objective. Petitioner has lived in the United States for more than twenty years, has worked and paid taxes, is not a threat to his community, has an approved I-130

and a presumptively approvable application for adjustment of status. Other than violations occurred more than 20 years ago, he has not violated any immigration laws and there is no basis whatsoever to conclude that he is a danger to the community.

75. Petitioner's detention is, in practical effect, punitive. By detaining Petitioner in these circumstances, without individualized assessment and without showing that less restrictive alternatives are inadequate, ICE is subjecting him to arbitrary and excessive detention in violation of substantive due process.

COUNT FOUR **Violation of the Administrative Procedure Act**

76. The allegations in the above paragraphs are re-alleged and incorporated herein.

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

78. Petitioner's detention involved no apparent individualized inquiry and no legal basis under the INA. Respondents have no reason to believe Petitioner had become a flight risk or danger to the community. His detention was and is arbitrary and capricious.

ARGUMENT FOR IMMEDIATE RELEASE

I. Release Is the Customary and Most Appropriate Remedy in Habeas Proceedings

79. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas court shall "dispose of the matter as law and justice require"); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in this case, where Petitioner has been detained in violation of both the INA and due process, is release on recognizance without further conditions of release. *See Munaf v. Geren*, 553 U.S. 674,

694 (“Habeas is at its core a remedy for unlawful executive detention” ... “[t]he typical remedy for such detention is, of course, release”).

80. This Court and dozens of others across the country have ordered immediate release in cases involving the detention based on erroneous application of § 1225. *See, e.g. Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Artiga v. Genalo*, 25-CV-5208 (OEM) (E.D.N.Y. Oct 05, 2025); *Crespo Tacuri v. Genalo*, 25-CV-06896 (NCM) (E.D. N.Y. Jan 06, 2026).
81. Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner’s arrest, which cannot be remedied by a post-deprivation hearing. *See Crespo Tacuri v. Genalo*, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Qasemi v. Francis*, 2025 WL 3654098, at *14 (S.D.N.Y. Dec. 17, 2025) (holding that bond hearing would not be an adequate remedy for the due process violations in petitioner’s sudden arrest and detention); *Alfaro Herrera v. Baltazar*, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (“because it has already been determined that Petitioner is neither a flight risk nor a danger to the community” ... “the Court finds that Respondents’ violations of Petitioner’s rights are best remedied by ordering Petitioner’s immediate release from immigration detention”); *Moctezuma Macias v. Henkey*, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (ordering immediate release instead of causing additional delay through a bond hearing given the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,”).

82. Here, Mr. Perez was taken into custody without notice, without a stated reason, and without any opportunity to contest his detention following his successful I-130 interview. When ICE issued a Notice to Appear and placed him into removal proceedings, he was eligible to adjust status to that of lawful permanent resident, having entered the United States with inspection and lacking any ground of inadmissibility. He thus had every incentive to appear in immigration court, and had demonstrated his intention to do so by availing himself of the immigration system in the years leading up to his removal proceedings. As he had lived in the United States more than twenty years as a law abiding father and husband who worked hard, paid taxes, and contributed to his community, there was no basis to conclude that Mr. Perez represented a danger of any kind to his community. There was simply no reason to place Mr. Perez in detention. That detention has continued, without a bond hearing, for nearly three months, largely because the immigration court erroneously found that Mr. Perez was subject to § 1225, rather than § 1226, and therefore not eligible for bond. *See* Paragraphs 34-42, *supra*. A bond hearing would have established that Mr. Perez had strong family and employment ties to his community, a presumptively approvable immigration petition that gave him every reason to appear in immigration court, and no criminal convictions. The erroneous denial of a bond hearing has very likely resulted in months of baseless detention for Mr. Perez. Only release can restore the *status quo ante* and make Mr. Perez whole.

II. A Bond Hearing Before an Immigration Judge Would Be Inefficient and Inadequate

83. A bond hearing by an immigration judge (“IJ”) is not the most appropriate or efficient use of this Court’s equitable authority. Recent actions by ICE attorneys and immigration judges during and after habeas court-ordered bond hearings have necessitated

enforcement proceedings across the country, creating significant extra work for courts and parties while petitioners' unlawful detention continues.

A. ICE's Use of the "Automatic Stay" of an IJ Bond Grant

84. In the last year, ICE has frequently appealed IJ bond grants to the Board of Immigration Appeals ("BIA") and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2), to keep petitioners detained despite an IJ bond grant. Dozens of habeas courts have ruled that the automatic stay violates due process. *See, e.g., Merchan-Pacheo v. Noem*, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process); *Garvey v. Noem*, 2026 WL 612302, at 3 (W.D. Mo. Mar. 4, 2026) (granting TRO and ordering immediate release given the "blatant absence of procedural due process" in ICE's use of automatic stay); *Otilio B.F. v. Andrews*, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025); *Guasco v. McShane*, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025).

B. ICE Unilaterally Imposing Conditions of Release Ordered by No Judge

85. In other cases, ICE has applied onerous electronic GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See Gonzalez Centeno v. Lowe*, 2026 WL 196513, at *2 (M.D. Pa. Jan. 26, 2026); *Diahn v. Lowe*, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026); *Batz Barreno v. Baltasar*, 2026 WL 120253, at *3 (D. Colo. Jan. 15, 2026); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 70 (D. Mass. 2025); *N- N- v. McShane*,

2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025); *da Silva v. LaForge*, 2026 WL 45165, at *4 (D.N.J. Jan. 7, 2026).

C. Widespread Noncompliance with Federal Habeas Court Orders

86. Hundreds of other cases have involved Respondents' outright refusal, inability, or failure to hold a timely bond hearing after being ordered to do so. *See Bautista v. Santacruz*, 2026 WL 468284, at *4 (C.D. Cal. Feb. 18, 2026); *Rodriguez Vazquez v. Hermosillo*, 2026 WL 102461, at *1 (W.D. Wash. Jan. 14, 2026); *Juan T.R. v. Noem*, 2026 WL 555601, at *1 (D. Minn. Feb. 26, 2026); *Fernandez Alvarez v. Noem*, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026); *Cartagena Hueso v. Soto*, 2026 WL 539271, at *3 (D.N.J. Feb. 26, 2026).

87. Government attorneys have also tried to disavow responsibility for ensuring their clients will comply with future court orders. *See Gomez Rodriguez v. Noem*, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025); *Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025); *O.F.C. v. Almodovar*, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026).

D. Immigration Judge Failures to Conduct Bond Hearings as Ordered

88. In some cases, immigration judges have failed to conduct a neutral, individualized bond hearing or to place the burden of proof as ordered by the habeas court. *See Ulloa Bueno v. Soto*, 2026 WL 509102, at *2 (D.N.J. Feb. 24, 2026); *Pedroso de Oliveira v. Freden*, 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025); *Mathon v. Searls*, 623 F. Supp. 3d 203, 208 (W.D.N.Y. 2022).

89. To avoid a wasteful round of enforcement proceedings — or even two — while unlawful detention continues, this Court should grant release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court grant the following:

- A. Temporarily enjoin Respondents from transferring Petitioner to another jurisdiction, in order to maintain the *status quo* and to ensure that Petitioner can fully participate in these proceedings and maintain adequate access to legal counsel;
- B. Maintain jurisdiction over this matter;
- C. Expedite consideration of this Petition under 28 U.S.C § 1657 (“the court shall expedite the consideration of any action brought under chapter 153”, which includes petitions for habeas corpus);
- D. 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;
- E. Declare that Petitioner’s detention under 8 U.S.C. § 1225(b) is unlawful and that Petitioner is properly detained, if at all, under 8 U.S.C. § 1226(a);
- F. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
- G. Declare that Respondents’ actions violate the Administrative Procedure Act;
- H. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- I. In the alternative, order this Court to hold its own bail hearing to determine whether Respondents can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his

ability to pay, or supervised release. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405–07 (E.D.N.Y. 2025); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 474–78 (D. Mass. 2010);

J. In the further alternative, if this Court orders an immigration court bond hearing, order that: (i) DHS bears the burden of proof to justify continued detention by clear and convincing evidence; (ii) DHS is barred from invoking the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), if the immigration judge grants bond; (iii) the immigration judge consider Petitioner’s ability to pay bond and alternatives to detention; and (iv) the parties submit a status update to the Court promptly after any hearing;

K. 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

L. Grant any further relief this Court deems just and proper.

Dated: June 10, 2026

Respectfully submitted,

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

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 10, 2026

/s/ Jesse Levine
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