

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

R.S.E.¹

Petitioner,

v.

MARKWAYNE MULLIN,
in his official capacity as Secretary, U.S.
Department of Homeland Security;

JUDITH ALMODOVAR,
in her official capacity as Acting Field
Office Director, New York City Field
Office, U.S. Immigration and Customs
Enforcement;

TODD BLANCHE,
in his official capacity as Acting Attorney
General, U.S. Department of Justice;

RAUL MALDONADO,
in his official capacity as the
Metropolitan Detention Center Warden.

Respondents.

Civil Action No. 1:26-cv-3507

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

¹ Petitioner's motion to proceed by initials will be filed contemporaneously with the petition.

INTRODUCTION

1. Petitioner R.S.E. (“Mr. S.E.”) arrived in the United States over two years ago with his family, seeking safety from the harm they faced in Venezuela. After apprehending Mr. S.E. at the border, Respondent U.S. Immigration and Customs Enforcement (“ICE”), released him on his own recognizance. ICE put Mr. S.E. on an order of supervision and placed him in non-detained removal proceedings by way of a Notice to Appear. For two years, Mr. S.E. complied with ICE’s reporting requirements and diligently pursued his case in Immigration Court, notifying the Court of any changes in address and attending court dates *pro se*.
2. Yet on February 19, 2026, Respondents detained Mr. S.E. at a routine check-in appointment with the Intensive Supervision Appearance Program (“ISAP”), one of ICE’s Alternative to Detention (“ATD”) programs, in Jamaica, Queens. ICE has alleges he failed to comply with the supervision program’s requirements, but they have yet to come forward with evidence of any violations. Without providing Mr. S.E. written notice or an opportunity to contest the allegations before a neutral decisionmaker, ICE unilaterally revoked his release and incarcerated him at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York. As such, ICE detained him without first considering whether his detention serves the limited purposes authorized for civil immigration detention: reducing flight risk or preventing danger to the community.
3. Mr. S.E.’s detention took place amid a wave of arrests when Respondents maintained that all non-citizens who had entered the country without inspection were subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Respondents’ interpretation of the mandatory detention statute at § 1225(b) has now been rejected by the Second Circuit and by the vast

majority of courts in this District. *Barbosa da Cunha v. Freden*, 175 F.4th 61, 96 (2d Cir. 2026).

4. Once detained, Mr. S.E. retained counsel at the Bronx Defenders to represent him in his removal proceedings. He applied for asylum and is awaiting his individual merits hearing in immigration court. On May 21, 2026, the immigration court conducted a bond hearing where the burden was improperly placed on Mr. S.E. to prove he was neither a flight risk nor a danger to the community, and where the Immigration Judge (“IJ”) failed to consider alternatives to detention. The IJ denied him bond, finding that Mr. S.E. failed to prove he was not a flight risk.
5. Mr. S.E. has now been detained for nearly four months and counting without a constitutionally adequate bond hearing. There is no end in sight to his detention, as his merits hearing in immigration court is scheduled for June 16, 2026, and, if he does not win relief, he will pursue an appeal at the Board of Immigration Appeals and, potentially, at the Second Circuit Court of Appeals.
6. Mr. S.E.’s continued detention is unlawful for four reasons.
7. First, Mr. S.E.’s detention at his check-in was neither individualized nor justified. Though ICE has claimed it was due to an ATD violation, ICE has failed to provide any evidence or explanation of what that violation was. Due process requires that the government provide noncitizens with notice and a hearing prior to the revocation of conditional release and redetention. Any redetention without prior notice, a showing of changed circumstances, and a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment. In failing to provide that process, Respondents violated Mr. S.E.’s due process rights.

8. Second, ICE subjected Mr. S.E. to mandatory detention under an immigration statute that does not apply to him, 8 U.S.C. § 1225(b)(2)—an interpretation that has now been rejected by the Second Circuit and by the vast majority of courts in this District. Mr. S.E. has now been detained for nearly four months, following ICE’s unlawful decision to detain him pursuant to 8 U.S.C. § 1225(b)(2).
9. Courts in this and neighboring districts have granted petitions nearly identical to that of Mr. S.E., finding that detention without an individualized custody determination and under the incorrect statute of detention violates due process and that release is the appropriate remedy. *See, e.g., C.A.R. v. Genalo*, No. 26-CV-4275 (JPO), 2026 WL 1506417, at *2 (S.D.N.Y. May 29, 2026) (finding a burden-shifted bond hearing not a “suitable remedy in the face of such a due process violation” and ordering immediate release); *S.G.V. v. Genalo*, No. 26-CV-2893 (PKC), 2026 WL 1492770, at *2 (E.D.N.Y. May 28, 2026) (“Respondent’s proffered custody redetermination cannot cure the violation of Petitioner’s due process rights at the time of arrest. The appropriate remedy, in such situations, is release.”); *Singh v. Blanche*, No. 2:26-CV-02538 (NJC), 2026 WL 1239057, at *4 (E.D.N.Y. May 6, 2026) (“ICE’s detention of [petitioner] . . . was unlawful from its inception, notwithstanding Respondents’ efforts at post-hoc rationalization based on its expansive interpretation of Section 1225(b)(2)”; *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 319 (E.D.N.Y. 2025), *appeal dismissed*, No. 26-219, 2026 WL 1208948 (2d Cir. Feb. 25, 2026) (petitioner’s “detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)”; *Inestroza Carbajal v. Frazier et al.*, No. 26-CV-2778-SJB, 2026 WL 1309265, at *2 (E.D.N.Y. May 12, 2026); *Garcia Lanza v. Noem*, No. 26-0029 (GRB), ---F.

Supp. 3d ---, 2026 WL 585130, at *7, *11 (E.D.N.Y. Mar. 3, 2026); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 491–92, 495 (E.D.N.Y. 2025); *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 497–98 (E.D.N.Y. 2025); *Arango v. Genalo*, No. 25-CV-6720 (RER), 2025 WL 3637500, at *2 (E.D.N.Y. Dec. 16, 2025) (ordering immediate release where “there is no indication in the record that a custody determination was made before or contemporaneous with [] arrest [under 1226(a)]”); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130, at *2 (E.D.N.Y. Nov. 13, 2025).

10. Third, by placing the burden on Mr. S.E. at his May 21, 2026 bond hearing to prove that he was not a danger to the community, the government has detained Mr. S.E. without ever providing him a constitutionally adequate bond hearing, violating his procedural due process rights under the Fifth Amendment well as the Administrative Procedure Act (“APA”). *See J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *7 (S.D.N.Y. Jan. 14, 2025) (joining the numerous courts in this district to conclude that “the Fifth Amendment Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that such detention is justified.”) (internal quotation marks omitted); *Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the “‘overwhelming consensus of judges in this district’ in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen’s length of detention”); *Guerrero v. Decker*, 19-cv-11644 (KPF), 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) (“[I]n accordance with every court to have decided this issue, [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).”) (internal citations omitted); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021)

(holding that, for non-citizens detained under § 1226(a), “due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk”).

11. Fourth, Mr. S.E.’s detention of nearly four months is now unconstitutionally prolonged, and the government still has not justified his continued detention on an individualized basis. *See, e.g., Pichardo Sosa v. Warden of Orange County Corr.*, 1:26-cv-02304-DEH, order granting the habeas petition (S.D.N.Y. June 8, 2026) (granting prolonged detention habeas where petitioner had been detained for four months). This is also a violation of Mr. S.E.’s due process rights under the Fifth Amendment. Under case law in the Second Circuit, he is entitled to a new bond hearing with the burden on the government. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020).
12. Accordingly, Mr. S.E. brings this petition seeking his immediate and unconditional release because his re-detention was unlawful. Alternatively, at a minimum, the Court should order a constitutionally adequate bond hearing where the government bears the burden of justifying Mr. S.E.’s continued detention by clear and convincing evidence and where the adjudicator considers alternatives to detention and his ability to pay, either held by this Court or, in the alternative, by the Immigration Court.
13. Mr. S.E. also asks this Court to enjoin his transfer outside this district. *Local 1814, Int’l 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.’” (quoting *United States v. Int’l Bhd. of Teamsters*, 907 F.2d 277,

281 (2d Cir. 1990)); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 403 (E.D.N.Y. 2025); *see also Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

PARTIES

14. Petitioner R.S.E. is a native and citizen of Venezuela and resident of New York since 2024. Exhibit (“Exh.”) A, Declaration of Mary Wilcox (“Wilcox Decl.”) at ¶¶ 5–7. ICE arrested him on February 19, 2026, at check-in in Jamaica, Queens, New York. *Id.* at ¶ 14. He is currently detained at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York. *See* Exh. E, ICE Online Detainee Locator; Exh. A at ¶ 14.
15. Respondent Markwayne Mullin is named in his official capacity as the Secretary of the United States Department of Homeland Security (“DHS”). In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Eastern District of New York, and is legally responsible for the pursuit of Petitioner’s detention and removal. As such, he is the legal custodian of Petitioner. Respondent Mullin’s office is located at the United States Department of Homeland Security, Washington, DC 20528.
16. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, she is the legal custodian of Petitioner. Respondent Almodovar’s office is located at 26 Federal Plaza, New York, NY 10278.
17. Respondent Todd Blanche is named in his official capacity as the Acting Attorney General of the United States. In this capacity, he is responsible for the administration of the

immigration laws as exercised by EOIR pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner's removal and bond proceedings and the standards used in those proceedings. As such, he is the legal custodian of Petitioner. Respondent Blanche's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

18. Respondent Raul Maldonado Jr. is named in his official capacity as the warden of MDC. In this capacity, he is responsible for the administration of MDC. As such, he is the legal custodian of Petitioner. Respondent Maldonado's office is located at 80 29th Street, Brooklyn, NY 11232.

JURISDICTION AND VENUE

19. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).
20. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging 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).
21. Venue is proper in this district under 28 U.S.C. § 2241 and § 1391. *See Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973). At the time of initial filing, Mr. S.E. was incarcerated at MDC, within this district, and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

22. Any attempt to seek release or bond from ICE or the Executive Office for Immigration Review (“EOIR”) would be futile, such that Mr. S.E. is not required to exhaust administrative remedies.
23. Exhaustion in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *See Quintanilla*, 2021 WL 707062, at *2; *Joseph v. Decker*, No. 18-CV-2640, 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018).
24. Courts in this and neighboring districts “have excused exhaustion when considering whether ‘(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.’” *J.U.*, 805 F. Supp. 3d at 489 (E.D.N.Y. 2025) (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).
25. Mr. S.E.’s case satisfies all four requirements.
26. As to the first exception, “there are no administrative remedies that could provide Petitioner with the relief he seeks.” *J.U.*, 805 F. Supp. 3d at 489. Like the petitioner in *J.U.*, Mr. S.E. “asserts that the original constitutional transgression occurred when ICE detained him . . . without first making an individualized determination that he posed a flight risk or danger to the community, or any other type of process that would justify the detention.” *Id.* Consequently, “the only cure to that unlawful detention is the vacatur of the detention—that is, the release of Petitioner from ICE custody.” *Id.* at 489–90. Because ICE failed to conduct any individualized review prior to Mr. S.E.’s detention, “a bond hearing for a post-deprivation review is wholly inadequate to remedy that [initial] unlawful detention.” *Id.*

27. Moreover, there are no administrative remedies available because immigration judges and the Board of Immigration Appeals (“BIA”) lack jurisdiction to entertain constitutional challenges, such as challenges to the initial bond burden allocation and prolonged detention. *See Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).
28. Second, Mr. S.E. faces irreparable injury of being unlawfully detained. Moreover, the fact of his incarceration significantly hinders his ability to prepare for his immigration case in contrast to if he were at liberty and able to freely visit with his attorney.
29. Third, any administrative appeal would be futile. While Mr. S.E. had a bond hearing before an IJ, the burden was erroneously placed on him to demonstrate he was not a danger or a flight risk. Because EOIR places the burden on the noncitizen, there is no adequate way to seek review of ICE’s failure to conduct an individualized pre-deprivation assessment or challenge ICE’s failure to support its position throughout the duration of detention. Mr. S.E. has appealed the IJ’s bond decision. His bond appeal is now pending with the Board of Immigration Appeals, which has yet to issue a briefing schedule.
30. Finally, Mr. S.E.’s claim “raises a substantial constitutional question that cannot be properly adjudicated administratively.” *J.U.*, 805 F. Supp. 3d at 490; *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497–98 (S.D.N.Y. 2025). Like the petitioner in *J.U.*, Mr. S.E. “contends that his continued detention . . . without DHS first making an individualized determination constitutes a violation of his due process rights.” 805 F. Supp. 3d at 490. Because “neither an immigration judge nor the BIA is positioned to properly adjudicate such a claim,” Mr. S.E. should be excused from exhausting administrative remedies before seeking relief from

this court. *Id.*; see also *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4 (E.D.N.Y. Oct. 5, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 497–98.

31. Under the four criteria set forth in *Beharry*, Mr. S.E. should be excused from seeking release from ICE or EOIR, as such efforts would prove futile.

STATEMENT OF FACTS

Mr. S.E. Sought Safety in the United States with his Family and Settled in Queens, NY

32. Mr. S.E. is a native and citizen of Venezuela. Exh. A, at ¶ 5. In Venezuela, Mr. S.E. owned and operated a motorbike repair shop. *Id.* His shop became the target of extortion by the “,” an armed colectivo that demanded weekly payments amounting to approximately half of his income. *Id.* Members of the group threatened to kill him if he failed to pay and forced him to  severely limiting his time to do work for paying customers. *Id.*
33. Fearing for his life and the safety of his children, Mr. S.E. fled Venezuela with his two children after members of the  colectivo extorted him, threatened him with death, and  during an altercation with a member of the group. *Id.* at ¶¶ 5–6. Unable to continue making the payments demanded by the  and fearing for his and his children's lives, Mr. S.E. sought safety in the United States. *Id.* at ¶¶ 5–6; Exh. B, Bond Hearing Transcript at 8.
34. Since moving to New York City, Mr. S.E. has steadily worked in auto repair shops in Queens. Exh. A at ¶ 7. Prior to his detention, Mr. S.E. was experiencing significant housing instability and had been living in his car for several months. *Id.* at ¶ 8. Nevertheless, he remained actively involved in the lives of his two children, seeing them almost daily and contributing to their care despite them living with their mother in a New York City shelter. *Id.* at ¶ 7.

Mr. S.E.'s Immigration History

35. Mr. S.E. entered the United States on or about February 20, 2024. Exh. A at ¶ 6. He was detained shortly after his arrival by Customs and Border Protection (“CBP”) officers near the Bridge of the Americas in El Paso, Texas. *Id.* After a brief period of detention, CBP released him on recognizance and took him to a shelter in Denver, Colorado, where he remained for a few days before eventually relocating to New York City. Exh. A at ¶ 6; Exh. D, I-213 at 3.
36. Mr. S.E. was placed in removal proceedings through a Notice to Appear issued by DHS and dated February 21, 2024. Exh. C, Notice to Appear. His proceedings were initially scheduled in Denver, CO, but venue was later transferred to New York when Mr. S.E. moved. Exh. A at ¶ 10.
37. After relocating to New York, Mr. S.E. was instructed by DHS to report to Federal Plaza for an ICE check-in. Exh. A at ¶ 11. Subsequently, ICE placed an ankle monitor on Mr. S.E. and required him to attend biweekly check-ins pursuant to the Alternatives to Detention (“ATD”) program. *Id.* Mr. S.E. reports that he never missed a check-in appointment during the nearly two years he remained on supervision. *Id.*
38. Mr. S.E. first appeared at a preliminary hearing, known as a master calendar hearing on October 23, 2025. *Id.* at ¶ 12. He was scheduled for a following MCH on May 14, 2026, to allow him time to find representation. *Id.*
39. However, on January 28, 2026, DHS filed a Motion to Advance Mr. S.E.’s previously scheduled May 14, 2026 Master Calendar Hearing, alleging that he had failed to comply with the terms and conditions of his enrollment in the ATD program. *Id.* at ¶ 13. The motion did not identify the nature of the alleged violation, nor did it provide any factual basis or evidence

supporting DHS's allegation. *Id.* at ¶ 13–14.

40. Mr. S.E. has had only one interaction with the criminal legal system since his arrival in the United States, resulting in a disorderly conduct violation under New York Penal Law § 240.20. *Id.* at ¶ 8. On January 18, 2026, he was arrested following a traffic stop for driving with a suspended license and improper plates. *Id.* The incident occurred during a period when Mr. S.E. was experiencing homelessness and living in his vehicle, while also performing work that required him to move vehicles at and around auto repair shops in Queens. *Id.* at ¶ 8. He has no other criminal convictions in the United States or anywhere else in the world. *Id.* at ¶ 9.

Mr. S.E.'s Removal Proceedings and Bond Proceedings in Immigration Court

41. A few weeks after DHS moved to advance his hearing, ICE took Mr. S.E. into custody on February 18, 2026, at a regularly scheduled ICE check-in. *Id.* at ¶ 14. ICE did not inform Mr. S.E. of the reason for his detention. *Id.*
42. Mr. S.E.'s first detained immigration court hearing occurred on March 13, 2026, during which he was again afforded time to obtain representation, which he did through the New York Immigrant Family Unity Project ("NYIFUP") intake. *Id.* at ¶ 15.
43. Now with representation, after retaining counsel with The Bronx Defenders, his next two Master Calendar Hearings took place on March 31, 2026, and April 10, 2026, respectively. *Id.*
44. On April 8, 2026, Mr. S.E. filed an application for asylum and related protection based on the persecution, threats, and violence he experienced at the hands of the  in Venezuela. *Id.* at ¶ 15. His final hearing on the merits, known as an individual hearing, has been scheduled for June 16, 2026, at the New York Varick Street Immigration Court. *Id.* at

¶ 17.

45. On May 14, 2026, Mr. S.E.'s counsel filed a Motion for Custody Redetermination on his behalf. *Id.* at ¶ 16. A bond hearing took place before the immigration court on May 21, 2026. *Id.* at 16; *see also* Exh. B, Bond Hearing Transcript.
46. At the hearing the Immigration Judge ("IJ") placed the burden on Mr. S.E. to demonstrate that he was neither a danger to the community nor a flight risk. The IJ denied bond on the basis of flight risk only. Exh. B at 12–13 (stating she is denying based on flight risk but that she does not find him to be a danger to the community). Notwithstanding Mr. S.E.'s compliance with ICE supervision for nearly two years, his appearance at immigration proceedings, and his successful change of venue after relocating from Colorado to New York, the IJ found that because Mr. S.E. previously lacked a fixed address, did not have his own phone, and had not submitted additional documentation regarding his proposed sponsor's residence, finances, and ability to support him, he had not met his burden of proving that he was not a flight risk. Ex. B, Bond Hearing Transcript at 12–14.
47. During the bond hearing, IJ Dara Reid questioned DHS regarding its assertion that Mr. S.E. had violated the terms of the ATD program. *Id.* at 10–11. DHS counsel was unable to identify any specific conduct that allegedly violated the program and ultimately stated that she was "not sure" what the terms of the program were. *Id.* at 11.
48. Mr. S.E. has been detained at the Metropolitan Detention Center ("MDC") since on or about February 21, 2026. Exh. A at ¶ 4. Courts in this District have recognized MDC as a facility plagued by chronic overcrowding and understaffing. *See Alfaro v. Mullin*, No. 26-0766 (GRB), 2026 WL 734348, at *4 (E.D.N.Y. Mar. 16, 2026) (describing MDC as "a facility so notoriously plagued with issues arising from overcrowding and underfunding that judges in

this Circuit have reduced or modified sentences for convicted criminals based on the conditions of confinement there”).

49. Mr. S.E. continues to be detained despite ICE’s failure to conduct an individualized assessment before his detention. During his detention, he has not received a constitutionally adequate bond hearing. Exh. B, Bond Hearing Transcript at ¶ 6.

STATUTORY TEXT & AGENCY INTERPRETATION

50. Congress has authorized DHS to detain noncitizens during their removal proceedings. *See generally Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (discussing authority to detain under 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)). The general “discretionary” detention statute, § 1226(a), at issue in this petition enables noncitizens to seek release on bond from an Immigration Judge (“IJ”):

- (a) **Arrest, detention, and release.** On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
 - (1) may continue to detain the arrested alien; and
 - (2) may release the alien on—
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (B) conditional parole; but
 - (3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

51. The BIA has held that in order to succeed in a request for custody redetermination, a noncitizen detained pursuant to § 1226(a) “must establish to the satisfaction of the Immigration Judge and the Board of Immigration Appeals” that he is not a danger to property or persons, a flight risk, or a threat to national security. *Matter of Adeniji*, 22 I&N Dec. 1102, 1102, 1113 (BIA 1999);

see also *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016); *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020).

LEGAL FRAMEWORK

I. Due Process Requires an Individualized Determination Prior to Detention under 8 U.S.C. § 1226(a)

52. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). This constitutional protection applies to noncitizens in the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.
53. Stated simply, “while [DHS] might want to enforce this country’s immigration laws efficiently, it cannot do that at the expense of fairness and due process.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).
54. Changes in presidential administrations do not and cannot modify the procedural due process protections afforded by the Constitution. 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.” *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 149 (W.D.N.Y. 2025).
55. 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 (1976), to determine what due process requires. *See Black v. Decker*, 103 F.4th 133, 155–56 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020).

56. 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.” *Id.*
57. In light of a noncitizen’s due process rights and the procedural rights conferred by § 1226(a) and its implementing regulations, a decision to detain a noncitizen ***requires an individualized determination*** as to the noncitizen’s risk of flight and danger to the community. *See, e.g., C.A.R. v. Genalo*, WL 1506417, at *2 (“[W]here a petitioner is detained under § 1226(a) and where there is no evidence of a sufficient individualized assessment, the petitioner’s detention violates the Due Process Clause.”); *S.G.V. v. Genalo*, 2026 WL 1492770, at *1 (“Respondents do not point to anything in the record indicating that, at the time of arrest, ICE made an individualized custody determination to support a lawful arrest under Section 1226(a).”); *Singh*, 2026 WL 233216, at *9–10; *Minarcaja Concha v. Lyons*, 818 F. Supp. 3d 367, 372 (E.D.N.Y. 2026); *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *7–9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio*, 811 F. Supp. 3d at 315–19; *Gopie*, 2025 WL 3167130, at *2 (E.D.N.Y. Nov. 13, 2025); *Hyppolite v. Noem*, 808 F. Supp. 3d at 490–94; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 805 F. Supp. 3d at 496–98; *see also, e.g., Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 492–96; *Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020).
58. Criminal allegations or convictions do not change this constitutional mandate, particularly when they form the sole grounds for finding that a petitioner has violated the terms of their

release. *See Singh*, 2026 WL 850670, at *3 (declining to find that respondents had conducted an individualized review prior to petitioner’s detention where respondents merely alleged that petitioner was re-arrested due to criminal charges); *Garcia Montalban v. Genalo*, No. 26 CIV. 1808, 2026 WL 787846, at *5 (S.D.N.Y. Mar. 20, 2026) (“[M]ere awareness of pending criminal charges is not sufficient to constitute an individualized determination as to [petitioner’s] flight risk or danger to the community.”); *Terrero v. Tsoukaris*, No. 26-CV-00869 (NCM), 2026 WL 607917, at *3 (E.D.N.Y. Mar. 4, 2026); *see also Kelly*, 2025 WL 2381591, at *3 (“But the mere ‘review’ of a RAP sheet is not tantamount to an individualized assessment of a suspect’s flight risk or dangerousness.”).

59. Under the *Mathews* rubric, 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); *Lopez Benitez*, 795 F. Supp. 3d at 492 (“[Petitioner] invokes ‘the most significant liberty interest there is—the interest in being free from imprisonment.’” (quoting *Velasco Lopez*, 978 F.3d at 851)); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (finding that noncitizens in immigration custody had arguably an even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

60. 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 manner as will allow [noncitizens] to actually seek . . . relief[.]” *Id.*

61. 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. Absent evidence in the record that a noncitizen is dangerous or a flight risk, district courts have held that the government cannot demonstrate a significant interest in their detention. *See, e.g., Singh*, 2026 WL 233216, at *9; *Minarcaja Concha*, 818 F. Supp. 3d at 390 (“Respondents therefore fail to demonstrate that ICE’s detention of [petitioner] without any notice or opportunity to be heard advances any legitimate government interests.”); *Ye*, 2025 WL 3521298, at *8; *Rodriguez-Acurio*, 811 F. Supp. 3d at 318; *Hyppolite*, 808 F. Supp. 3d at 491; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 2025 WL 2772765, at *10; *see also, e.g., Lopez Benitez*, 795 F. Supp. 3d at 495–96; *Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. 2025).
62. Recent decisions by federal courts in this and neighboring districts confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. *See Iza by Iza v. Larocco*, --- F. Supp. 3d ---, No. 2:25-cv-6915, 2026 WL 31378, at *2 (E.D.N.Y. Jan. 5, 2026) (“Respondents’ detention of Mr. Iza without providing any notice or opportunity to be heard before a DHS officer or immigration judge is a violation of his right to procedural due process.”); *Y-C- v. Genalo*, No. 25-cv-06558, 2025 WL 3653496, at *7 (E.D.N.Y. Dec. 17, 2025) (“The Court therefore concludes, consistent with the view of many other district courts in analogous cases, that the ‘ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to be heard violates his

due process rights.” (quoting *Ye*, 2025 WL 3521298, at *8)); *Rodriguez-Acurio*, 811 F. Supp. 3d at 313; *O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 402–03 (E.D.N.Y. 2025); *Hyppolite*, 808 F. Supp. 3d at 491; *Yao v. Almodovar*, 813 F. Supp. 3d 461, 476 (S.D.N.Y. 2025) (“Yao’s December 2 arrest—effected without notice, an opportunity to be heard, an individualized assessment of his circumstances, or any exercise of discretion by ICE—made it impossible for him to raise any of these arguments [as to why he should be released]”); *see also Lopez Benitez*, 795 F. Supp. 3d at 496 (“Respondents’ ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights.”); *Cuy Comes v. DeLeon*, No. 25-CV-9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025).

63. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of process provided post-detention can remedy that violation. *See, e.g., Cajamarca-Janza v. Soto*, No. 26-CV-3066 (HG), 2026 WL 1506777, at *5 (E.D.N.Y. May 29, 2026) (“Taken together, Petitioner was denied due process because ICE’s initial custody determination was inadequate, thereby rendering his detention invalid.”); *C.A.R.*, 2026 WL 1506417, at *2 (“[W]here a petitioner is detained under § 1226(a) and where there is no evidence of a sufficient individualized assessment, the petitioner’s detention violates the Due Process Clause.”); *Pastrana-Beltran v. Mullin*, No. 26-CV-2657 (RER), 2026 WL 1398609, at *2 (E.D.N.Y. May 19, 2026) (“Respondent cannot create a post hoc rationalization for Pastrana-Beltran’s detention.”); *Inestroza Carbajal*, 2026 WL 1309265, at *4; *Curimilma Quille v. Blanche*, No. 26-CV-2818 (HG), 2026 WL 1453889, at *5 (E.D.N.Y. May 22, 2026) (“Taken together, Petitioner was denied due process because ICE’s initial custody determination was inadequate. This alone is enough to render his detention invalid.”);

Ye, 2025 WL 3521298, at *9 (“Here, the constitutional violation the petitioner suffered—the government’s failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond—renders any post-deprivation review by an immigration judge inadequate.”); *Rodriguez-Acurio*, 811 F. Supp. 3d at 319–20 (“In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.”); *Artiga*, 2025 WL 2829434, at *9 (“Given the absence of any deliberative process prior to or contemporaneous with the deprivation of Petitioner’s liberty, formerly granted and approved by Respondents, a writ of habeas corpus is the only form of relief and the most appropriate remedy.”); *J.U.*, 805 F. Supp. 3d at 490 (“ICE’s detention of Petitioner did not comport with the implementing regulations and § 1226(a); thus, a bond hearing for post-deprivation review is wholly inadequate to remedy that unlawful detention.”); *see also, e.g., S.G.V.*, 2026 WL 1492770, at *2 (stating the Court is “deeply troubled by Respondents’ post-hoc recharacterization of this unlawful arrest” and allowing for such post-hoc justifications to stand would “permit Respondents to flout the demands of due process and the regulations governing initial custody determinations”); *Crespo Tacuri v. Genalo*, No. 25-CV-06896 (NCM), 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (“Respondents caused petitioner to be detained in violation of his due process rights. No relief short of petitioner’s immediate release would be appropriate or sufficient in this case.”); *Tumba v. Francis*, 813 F. Supp. 3d 394, 406 (S.D.N.Y. 2025) (“If Petitioner’s initial detention itself was consistent with due process, Petitioner would undoubtedly be entitled to a bond hearing pursuant to 8 U.S.C. § 1226. But the Government’s violation of Petitioner’s constitutional

rights originated with her detention in the first instance.”); *Y-C-*, 2025 WL 3653496, at *7 (“To remedy petitioner’s deprivation of due process, the Court holds that petitioner is entitled to immediate release from detention.”); *O.F.B.*, 810 F. Supp. 3d at 405 (“The government’s ongoing detention of the Petitioner, in the face of this complete failure of process, entitles him to immediate release.”).

64. As a result, courts in this district have ordered a noncitizen’s immediate release where their pre-detention due process rights have been violated. *See, e.g.,* *Cajamarca-Janza*, 2026 WL 1506777, at *5; *C.A.R.*, 2026 WL 1506417, at *2; *S.G.V.*, 2026 WL 1492770, at *2; *Curimilma Quille*, 2026 WL 1453889 at *7; *Pastrana-Beltran*, 2026 WL 1398609, at *3; *Inestroza Carbajal*, 2026 WL 1309265, at *5; *Han v. Noem*, No. 25-CV-10753 (VSB), 2026 WL 322963, at *8 (S.D.N.Y. Feb. 6, 2026); *Crespo Tacuri*, 2026 WL 35569, at *7; *Y-C-*, 2025 WL 3653496, at *7; *Ye*, 2025 WL 3521298, at *9; *Rodriguez-Acurio*, 811 F. Supp. 3d at 319–21; *O.F.B.*, 810 F. Supp. 3d at 405; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 805 F. Supp. 3d at 498.

II. The Appropriate Remedy for Detention Without any Pre-Deprivation Process is Immediate Release

65. “Release from detention is the ‘typical remedy’ for ‘unlawful executive detention.’” *Rodriguez-Acurio*, 811 F. Supp. 3d at 319 (quoting *Munaf v. Geren*, 533 U.S. 674, 693 (2008)). A bond hearing “would not remedy the core constitutional violation at issue” because “the detention without adequate pre-deprivation procedures has already been carried out.” *Rodriguez-Acurio*, 811 F. Supp. 3d at 319–20; *see also* *Minarcaja Concha*, 818 F. Supp. 3d at 391.

66. Further, were the Court to order a new bond hearing, any relief ordered could prove illusory due to pressure exerted on immigration judges (“IJ”) to deny bond. In reporting by the *New York Times*, a current IJ said that “the pressure to deny bond is overt.” Nicholas Nehamas et

al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. Times (Apr. 9, 2026), <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html>. EOIR closely tracks any bond grant. *Id.* Politico has similarly reported that bond hearings “have been fundamentally flawed or even pre-cooked, designed to result in findings of ‘danger to the community’ or ‘flight risk’ without a fair consideration of the evidence.” Kyle Cheney, *Judges Keep Ordering Immigration Hearings—But Say the Results Are Often a Sham*, Politico (Mar. 6, 2026), <https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660>; see also, e.g., Julie Manganis, *Judge Presses DOJ on Immigrant Bond Denials After Report*, Law 360 (Apr. 10, 2026), <https://www.law360.com/articles/2463911/judge-presses-doj-on-immigrant-bond-denials-after-report> (reporting that Judge Patti B. Saris said “she is ‘worried’ that the immigration court . . . is simply denying all requests for bond automatically”); *Vera-Velez v. Soto*, No. 26CV1480 (EP) (MAH), 2026 WL 963348, at *3 (D.N.J. Apr. 9, 2026) (noting that “[t]he evidence submitted by the [p]etitioner suggests that [IJs] are being appointed or pressured to find in favor of detention”); *Garcia Ortiz v. Henkey*, No. 1:26-CV-00043-BLW, 2026 WL 948275, at *3 (D. Idaho Apr. 7, 2026) (observing that, “given the broader irregularities in bond hearings across the country . . . administrative remedies in the immigration system appear no longer efficacious”).

67. Consequently, “‘disposing of the matter as law and justice require’ necessitates [Mr. S.E.’s] release” *Rodriguez-Acurio*, 811 F. Supp. 3d at 320 (quoting 28 U.S.C. § 2243).

68. If the Court declines to order Mr. S.E.’s release, it should, as discussed *infra*, order robust protections to ensure that any bond hearing is as fair as possible. Namely, the Court should order that the government bear the burden of establishing danger and flight risk by clear and

convincing evidence, that the IJ consider alternatives to detention in evaluating both danger and flight risk, and that the IJ consider ability to pay in setting any bond amount. *See L.G.M. v. LaRocco*, No. 25-CV-2631 (PKC), 2025 WL 2173577, at *3 (E.D.N.Y. July 31, 2025).

III. Although Immediate Release is Appropriate, Due Process Requires That Any Bond Hearing under 8 U.S.C. § 1226(a) Contain Certain Procedural Protections

69. While “[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process,” there are “important constitutional limitations on that power’s exercise.”

Velasco Lopez, 978 F.3d at 848 (internal quotations and citations omitted).

70. One of those limitations is the “fundamental requirement” of procedural due process, namely “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). When the government seeks to use its weighty power to confine a person, due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and prevent flight. *Id.* at 690; *accord Velasco Lopez*, 978 F.3d at 854–55.

71. Because Mr. S.E. has never received adequate procedural protections to protect his weighty interest in freedom, his continued incarceration violates his constitutional right to due process.

72. First, at no time during Mr. S.E.’s over four months of detention has DHS justified his ongoing incarceration. As a chorus of district courts in this Circuit has held, due process requires the government to bear the burden of proof by clear and convincing evidence at all bond hearings

regardless of the length of detention. Instead, the immigration judge at Mr. S.E.'s initial bond hearing unconstitutionally placed the burden of proof on him.

73. Second, regardless of whether the initial hearing was adequate, Mr. S.E.'s detention is now prolonged, which is an independent basis entitling him to a new bond hearing with the burden of proof on the government, as dictated by the Second Circuit in *Velasco Lopez* and *Black*. To ensure that Mr. S.E.'s detention is related to a legitimate government interest as the Due Process Clause requires, an immigration judge must meaningfully consider alternatives to detention and his ability to pay. These procedural protections were absent from Mr. S.E.'s initial hearing and are necessary in any subsequent hearing.

A. Due Process Requires That Petitioner Receive a Hearing Where the Government Bears the Burden of Proof by Clear and Convincing Evidence

1. The Burden Must Be on the Government Regardless of the Length of Detention

74. As repeatedly recognized by courts in this Circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention.

75. The Second Circuit requires that, once detention is prolonged, the government *must* bear the burden of justifying detention by “clear and convincing evidence.” *Black*, 103 F.4th at 155; *Velasco Lopez*, 978 F.3d at 855. Nevertheless, the Second Circuit has expressly declined to reach the question of what protections due process requires, even before detention becomes prolonged. *See Velasco Lopez*, 978 F.3d at 855 n.13; *Quintanilla*, 2021 WL 707062, at *4 (discussing *Velasco Lopez*); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (declining to interpret *Velasco Lopez* to foreclose petitioner’s argument that a burden-shifted hearing was required before detention was prolonged).

76. Even prior to *Velasco Lopez*, an “overwhelming consensus” of district courts had held that placing the burden on the noncitizen was unconstitutional regardless of the noncitizen’s length of detention. *See Quintanilla*, 2021 WL 707062, at *3 (collecting cases).
77. In *Velasco Lopez*, the Second Circuit suggested that placing the burden on the petitioner at the time of his initial bond hearing was unconstitutional. *See* 978 F.3d at 852 n.8 (noting the time lapse between petitioner’s detention and the initial bond hearing and observing that, “[h]ad he been charged with a violent felony . . . the Government would have been required . . . to carry the burden of establishing by a preponderance of the evidence that no conditions of release would reasonably assure the defendant’s presence at trial and by clear and convincing evidence that no conditions could assure the safety of the community”). The First Circuit has also held that the government must bear the burden at all 1226(a) custody hearings, regardless of length of detention. *Hernandez-Lara*, 10 F.4th at 35 (relying on the logic of *Velasco Lopez*).
78. Since *Velasco Lopez*, district courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all Section 1226(a) custody hearings.² *J.C.G.*, 2025 WL 88831, at *9 (“According to the Government, *Velasco Lopez* ‘suggests that there is no constitutional infirmity in an immigration judge’s placement of the burden of proof on a noncitizen detained under § 1226(a) at his initial bond hearing where the noncitizen has been afforded adequate process.’ This Court declines to read any such ‘suggestion’ into *Velasco Lopez*’s holding.”); *B.S. v. Joyce*, No. 22-

² Some district courts have focused on the narrower question posed by *Velasco Lopez*, analyzing only whether detention is prolonged such that a new bond hearing is required. *See Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020); *Gonzalez Evangelista v. Decker*, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021).

CV-9738 (PKC), 2023 WL 1962808, at *4 (S.D.N.Y. Feb. 13, 2023) (“Like other courts faced with due process challenges to initial bond hearings since *Velasco Lopez*, this Court will continue to require the government to bear the burden of proof at all section 1226(a) bond hearings.”); *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the “‘overwhelming majority of courts’ that have found that the Due Process Clause of the Fifth Amendment requires” the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified” and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (“[N]either the Circuit’s decision in *Velasco Lopez* nor any other binding appellate authority overrules the ‘overwhelming consensus’ of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent ‘prolonged detention.’”); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government’s argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla*, 2021 WL 707062, at *3 (joining the “‘overwhelming consensus of judges in this district’ in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen’s length of detention”).

79. This consensus approach aligns with the Second Circuit’s analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. 978 F.3d at 856; see *Hernandez-Lara*, 10 F.4th at 37–38.

80. Those precedents underscore that civil detention must be carefully limited to avoid due process concerns. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).
81. These precedents further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers—not the person detained—to establish the necessity of that detention. *See, e.g., Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81–82, 86 (holding unconstitutional a state civil insanity detention “statute that place[d] the burden on the detainee to prove that he is not dangerous”). That interest in liberty is strong even at the outset of detention: “[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130–31 (2010) (clear and convincing standard applies under a federal statute which permits a continued confinement of a “mentally ill, sexually dangerous” prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued detention period). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received “the *full procedural protections* our criminal justice system offers,” *Demore*, 538 U.S. at 513 (emphasis added); on Congress considering specific studies regarding its legislative choice, *id.* at 518–21; and on the relatively short duration of

detention it anticipated, *id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

82. And finally, those precedents hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear-and-convincing standard of proof when an individual’s liberty is at stake. *Black*, 103 F.4th at 138; *Velasco Lopez*, 978 F.3d at 856 n.15 (“When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof.” (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha*, 504 U.S. at 81. In cases where the individual’s interest is of “such weight and gravity,” it is improper to ask an individual to “share equally with society the risk of error.” *Addington*, 441 U.S. at 427. Immigration detention implicates “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851.

B. At a Bond Hearing, the Immigration Judge Must Consider Alternatives to Detention and Ability to Pay to Satisfy Due Process

83. The Due Process Clause requires that detention “bear a reasonable relation to its purpose.” *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th 19, 32 n.5 (1st Cir. 2021) (same). To satisfy this requirement, a bond hearing must include additional procedural protections. Specifically, the IJ must consider alternative conditions of release and an individual’s ability to pay.

84. Under Second Circuit case law, due process requires the consideration at any bond hearing of “alternatives to detention and the noncitizen’s ability to pay.” *Black*, 103 F.4th at 159; *accord Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) (“[A] bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government’s legitimate interests.”). After a noncitizen has been deemed eligible for bond, “refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons.” *Black*, 103 F.4th at 58. Indeed, at that point, the noncitizen will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing “little more than punishing a person for his poverty.” *Hernandez*, 872 F.3d at 992 (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).
85. Similarly, if the government can protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno*, 481 U.S. at 755 (approving a pre-trial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government’s interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) (“[T]he determination of whether detention was ‘necessary to serve a compelling regulatory purpose’ necessarily required the decisionmaker to consider whether ‘a less restrictive alternative to detention’ would suffice.”). Accordingly, due process requires that the government, to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect

their interests, and the immigration judge in turn must consider those alternatives. *See Cantor v. Freden*, 761 F. Supp. 3d 630, 640 (W.D.N.Y. 2025) (“This Court therefore holds that when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight” and *Black* does not state otherwise); *D.C. v. Noem*, No. 26 CIV. 1833 (PAE), 2026 WL 787895, at *12 (S.D.N.Y. Mar. 20, 2026) (“The IJ’s consideration of alternatives to detention would guard against the risk of D.C.’s continued detention where less restrictive means are available to protect the public.”); *Castro Coneo v. Almodovar*, No. 25-CV-09850 (NSR), 2025 WL 3754079, at *6 (S.D.N.Y. Dec. 29, 2025); *G.F.F. v. Francis*, No. 25-CV-7368 (JGK), 2025 WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025) (emphasis added); *L.G.M. v. LaRocco*, 2025 WL 2173577, at *3–4; *Hechavarria v. Sessions*, 2018 WL 5776421, at *9 n.13 (W.D.N.Y. Nov. 2, 2018) (“Whether detention is necessary to serve a compelling regulatory purpose requires consideration of whether a less restrictive alternative to detention ... would also address those purposes.”); *see also Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances). The constitutionally inadequate procedural protections at Mr. S.E.’s first bond hearing pose a risk of erroneous deprivation.

86. In light of the strong interest that Petitioner has in his bodily liberty, the Constitution requires adequate procedural protections—namely the consideration of his ability to pay and alternative conditions of release—prior to depriving him of his freedom.

C. In the Alternative, This Court Has the Authority to Conduct a Bond Hearing for Mr. S.E.

87. Should the Court order a hearing where the government must justify Mr. S.E.'s continued detention—or should a pre-deprivation hearing be necessary if the Court orders release and the government intends to re-detain Mr. S.E. again—holding the hearing directly before this Court is the an efficient use of resources for all parties and is an appropriate method for ensuring due process in this case. *See, e.g., L.G.M.*, 788 F. Supp. 3d at 405–07 (“To spare all parties potential additional dissatisfaction and grievance in a process that has already proved protracted, the Court chooses to cut to the chase and hold the bail hearing, so it can assess the witnesses and other evidence for itself.”); *Ramirez v. Watkins*, No. CIV.A. B:10-126, 2010 WL 6269226, at *17 (S.D. Tex. Nov. 3, 2010) (“The District Judge should personally conduct the necessary hearing, and not the immigration judge, to ensure that all relevant procedural safeguards are expeditiously met so as to not cause further offense to the Fifth Amendment.”); *Ozturk v. Trump*, 783 F.Supp.3d 801, 813 (D.Vt. 2025) (“This is an Article III court. It is obligated to conduct an independent and rigorous review of the evidence that is a part of the record in this case. Immigration judges, by contrast, are executive branch employees subject to executive branch orders.”).

CLAIMS FOR RELIEF

COUNT ONE

MR. S.E.'S DETENTION VIOLATES HIS RIGHT TO PROCEDURAL DUE PROCESS BECAUSE RESPONDENTS FAILED TO GIVE HIM NOTICE OF HIS ALLEGED VIOLATIONS AND FAILED TO CONDUCT AN INDIVIDUALIZED ASSESSMENT PRIOR TO DETAINING HIM

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

89. 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 also Reno*, 507 U.S. at 292; *Zadvydas*, 533 U.S. at 678; *Demore*, 538 U.S. at 510.
90. Accordingly, Mr. S.E. was entitled to due process of law *in advance* of any detention.
91. ICE's February 2026 revocation of Mr. S.E.'s release and subsequent redetention caused him to be separated from his community and placed in a carceral setting. ICE violated his due process rights in so far as he was never given notice of any alleged ATD violations or an opportunity to respond to the alleged violations; indeed, counsel for ICE could not even articulate what the alleged violations were at the May 21, 2026 bond hearing. Exh. B at 10–11. Further, in the absence of any alternative justification for his arrest, ICE therefore clearly arrested Mr. S.E. without individualized review under the policy of arrests pursuant § 1225, constituting a due process violation.
92. Mr. S.E.'s redetention therefore infringed upon a liberty interest that cannot be revoked without adequate due process under the Fifth Amendment to the U.S. Constitution. *See Ceesay*, 2025 WL 1284720, at *13 (“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.”).
93. The Second Circuit applies the *Mathews* factors to determine what process is due in the context of immigration detention, balancing: (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*, 978 F.3d at 851 (citing *Mathews*, 424 U.S. at 335).

94. Mr. S.E.'s private interests here are strong: he has been deprived of his liberty. Indeed, detention should be the "carefully limited exception" and implicates the "most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.
95. Further, Respondents detained Mr. S.E. without notice, an opportunity to respond, or any meaningful evaluation as to his circumstances, including whether he posed a flight risk or a danger to the community.
96. With respect to the Government's interest, Respondents have not articulated any individualized purpose for Mr. S.E.'s detention. *Zadvydas*, 533 U.S. at 690–91. The DHS attorney at his unconstitutional bond hearing could not identify any violations of his supervised release. Exh. B.
97. Here, immediate release is appropriate because Respondents have not shown that they conducted an individualized determination regarding Mr. S.E. *before* his summary arrest.

COUNT TWO

ICE'S DETENTION OF MR. S.E. CONSTITUTED A VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(A), AND IMPLEMENTING REGULATIONS

98. Petitioner realleges and incorporates by reference each and every allegation contained above.
99. Respondents detained Petitioner pursuant to 8 U.S.C. § 1225(b)(2), their mandatory detention authority. Respondents are continuing to detain him, despite controlling Circuit precedent that such mandatory detention is unlawful. *Barbosa da Cunha*, 175 F.4th at 77–78.
100. At the time of his arrest and detention by Respondents, Petitioner was not seeking admission to the United States. He was already residing in the United States.

101. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.
102. Because Petitioner's detention should be governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b), to Petitioner is unlawful under the Immigration and Nationality Act.

COUNT THREE

MR. S.E.'S DETENTION VIOLATES HIS RIGHT TO PROCEDURAL DUE PROCESS BECAUSE HIS BOND HEARING WAS CONSTITUTIONALLY INADEQUATE AND HIS DETENTION IS PROLONGED

103. Petitioner realleges and incorporates by reference each and every allegation contained above.
104. Requiring Mr. S.E. to bear the burden in bond hearings pursuant to § 1226(a) violates his due process rights in two ways: First, Mr. S.E. has never had a constitutionally adequate bond hearing that justifies his detention. Second, Mr. S.E. has been subject to prolonged detention of nearly four months and counting. Under either situation, a constitutionally adequate bond hearing where the burden of proof is placed on DHS to justify detention by clear and convincing evidence, with consideration of ability to pay and alternatives to detention, is required under *Black*, *Velasco Lopez*, and *Mathews*. As a district court sitting in this state recently held, "when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight." *Cantor*, 761 F. Supp. 3d at 640.
105. Regarding the first *Mathews* factor, Mr. S.E.'s interest is in being free from imprisonment, which is "the most significant liberty interest there is." *Velasco Lopez*, 978 F.3d at 851. Like the petitioner in *Velasco Lopez*, Mr. S.E. has been incarcerated at a criminal jail,

where conditions are indistinguishable from those charged criminally or serving criminal sentences. *Id.* The Second Circuit made clear that the reality of detainees' day-to-day experiences in detention must be considered when analyzing whether due process has been violated, stating "[t]he deprivation [petitioner] experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or see his family or friends or others outside visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." *Id.* All of these circumstances apply to Mr. S.E. and applied to him at the time of his initial bond hearing.

106. In addition, Mr. S.E.'s detention has become prolonged, strengthening the gravity of his private interest, and additional process is required. *See Black*, 103 F.4th at 150; *Velasco Lopez*, 978 F.3d at 853. His more than four-month detention aligns with the four-month period the *Demore* Court viewed as "typical of agency trial and appeal periods combined." *Arana v. Decker*, No. 20 CV 4104 (LTS), 2020 WL 7342833, at *6 (S.D.N.Y. Dec. 14, 2020); *see also Veletanga v. Noemi*, No. 25-CV-9211 (NSR), 2025 WL 3751865, at *4 (S.D.N.Y. Dec. 26, 2025) ("Petitioner contends that his due process rights have been violated by his prolonged mandatory detention without a bond hearing for more than three months. [] This Court agrees."); *see also Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 433 (3d Cir. 2026) ("Detention becomes more and more suspect after five months." (quoting *German Santos*, 965 F.3d at 211)). Moreover, Mr. S.E. has not yet even had his merits hearing for his asylum claim and, as such, his time in detention is not nearing its end. *See Gonzalez Evangelista*, 2021 WL 101201, at *4 (noting that it was unclear if the petitioner's detention was nearing its conclusion). Current immigration counsel at the Bronx Defenders expects his proceedings to last at least 10 months from detention. Exh. A, at ¶ 19. A recent analysis of BIA

data estimated that the average processing time for a detained appeal is 314.7 days. Exh. F, Declaration of Zabdi Salazar. If this average remains true for Mr. S.E., he will be detained until at least April 2027 if he is denied relief by the Immigration Judge and pursues an appeal at the BIA.

107. The second factor, risk of erroneous deprivation, also weighs in Mr. S.E.'s favor. The government has "substantial resources to deploy" to obtain and present evidence justifying detention. *See Velasco-Lopez*, 978 F.3d at 852. By contrast, detention is hampering Mr. S.E.'s ability to present evidence and secure bail. In denying bond, the Immigration Judge did not consider whether conditions, such as electronic monitoring or mandating enrollment in therapeutic or other supportive services, could mitigate the risk of danger. *See D.C.*, 2026 WL 787895, at *12; *Castro Coneo*, 2025 WL 3754079, at *6; *G.F.F.*, 2025 WL 3141735, at *6; *L.G.M.*, 2025 WL 2173577, at *3–4; *Hechavarria*, 2018 WL 5776421, at *9 n.13.

108. The third *Mathews* factor involves an examination of the government's interests at stake. *Velasco Lopez*, 979 F.3d at 854. This factor also weighs in Mr. S.E.'s favor because the government has no interest in detaining someone who poses neither a danger nor a risk of flight. *Id.*; *see also Arana*, 2020 WL 7342833 at *6–7. The additional burden on the government to attempt to prove the necessity of detention is minimal here, where it can rely upon its "substantial resources and access to sources of information" and has already done so for purposes of the merits case. *Velasco Lopez*, 978 F.3d at 854.

109. The IJ's requirement that Mr. S.E. carry the burden at his bond hearing, as well as the failure to consider alternatives to detention, despite the gravity of Mr. S.E.'s liberty deprivation, was unconstitutional. The lack of sufficient process, wherein the government justifies his detention by clear and convincing evidence, after this prolonged period of detention, similarly

violates his due process rights.

110. Should Mr. S.E. be released on bond after a constitutionally adequate bond hearing, “all interested parties” will have prevailed: the Government “because it has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community;” Mr. S.E. “because he is no longer incarcerated;” and the public because its “interest in seeing that individuals who need not be jailed are not incarcerated has been vindicated.” *Velasco Lopez*, 978 F.3d at 857.

COUNT FOUR

MR. S.E.’S DETENTION VIOLATES THE ADMINISTRATIVE PROCEDURE ACT – 5 U.S.C. § 701 et seq.

111. The Immigration Judge’s requirement that Mr. S.E. carry the burden in his § 1226(a) bond hearing was rooted in an invalid agency interpretation.
112. The burden allocation violates the APA because it violates the Due Process clause of the Fifth Amendment.
113. In addition, the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), is arbitrary and capricious. *Adeniji* was arbitrary and capricious because the BIA relied on an incorrect and inapplicable regulation when it shifted the burden to establish eligibility for release to detainees. *Compare* 8 C.F.R. § 236.1(c)(8), *with* § 236.1(d)(1).
114. The agency also acted unreasonably in deciding *Adeniji* because its decision constituted an unexplained departure from precedent that called for a presumption against detention. Specifically, the BIA abandoned the long-standing case law that favored liberty for non-criminal detainees and created a new presumption in favor of detention.
115. Lastly, *Adeniji* is an invalid agency decision as applied to Mr. S.E. because it was a custom-made solution for a uniquely situated detainee based on a stipulation from the parties.

The outcome of *Adeniji* depended on a stipulation on a significant legal issue and a desire to avoid a windfall for a specific noncitizen convicted of an aggravated felony whose eligibility for bond was mere happenstance. *See Adeniji*, 22 I&N Dec. at 1109, 1112. The BIA's precedent placing the burden on all noncitizens, including those who do not have aggravated felony convictions, in § 1226(a) hearings, is therefore arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the New York ICE Field Office pending the resolution of this case;
- 3) Grant a writ of habeas corpus ordering Respondents to immediately and unconditionally release Petitioner from custody, or at minimum, order a bond hearing with the burden on the government to justify detention by clear and convincing evidence within fourteen to twenty-one days, where the immigration judge must consider alternatives to detention and Petitioner's ability to pay any bond, and enjoin Respondents from invoking the automatic stay of any grant of bond;
- 4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other and further relief that this Court deems just and proper.

Dated: June 11, 2026
New York, NY

Respectfully submitted,

/s/ Nora Christiani
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Counsel for Petitioner

Exhibits

Exhibit A: Declaration of Mary Wilcox, Esq.

Exhibit B: Bond Hearing Transcript

Exhibit C: Notice to Appear

Exhibit D: I-213 (2024)

Exhibit E: ICE Detainee Locator

Exhibit F: Declaration of Zabdi Salazar

hereby verify that the statements made in the attached First Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 06/11/2026

/s/ Mary Wilcox
Mary Wilcox