IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

WILLIAM WILFREDO SISALEMA REA; ***Petitioners,*** **v.** **MICHAEL BALL, et al.;** ***Respondents.***	**Civil Action No. 9:26-cv-01248-AMN** **PETITIONERS' REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner, William Wilfredo Sisalema Rea, ("Petitioner" or "Sisalema") is a citizens of Ecuador who entered the United States without inspection on April 27, 2024, was initially detained by Respondents, and were subsequently released to pursue his asylum claim after Respondents determined that he posed no risk of flight nor danger to the community. Petitioner was released on his own recognizance on April 28, 2024. Over two years later, Petitioner was arbitrarily and unlawfully re-detained without a warrant and without a pre-deprivation hearing on June 17, 2026 at the Plattsburgh Ferry Dock.

LIBERTY INTEREST AND UNLAWFUL RE-DETENTION

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioners' interests in not being detained are "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many

of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 208 U.S. at 482. Although the government may restrict the individual "to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, his "condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, the parolee possesses a protected interest in his continued liberty. *Id.* at 481-84.

Respondents released Petitioner after determining that he did not pose a flight risk or danger to the community. Petitioner was able to apply for various immigration benefits, support themselves, and work. His situation in the United States since his release has been "very different from that of confinement in a prison." *Morrissey*, 408 U.S. at 482. Thus, Petitioner has a protected liberty interest. See, e.g., *Perez v. Akshar, et al*, No. 9:26-cv-120-ECC (Coombe, J.) (N.D.N.Y., March 5, 2026); *See also Crespo Tacuri v. Genalo*, No. 25-cv-6896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (concluding that Petitioner had a "cognizable private interest in being freed from unlawful detention") (citing, among others, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free

from physical detention by one's own government."); *Fernandez Lopez v. Wofford*, 2025 WL 2959319 , at *4 (E.D. Cal. Oct. 17, 2025).

By detaining Petitioner without articulating a rationale based on his individualized circumstances, and by detaining him in contradiction of his individualized circumstances as Respondents have previously assessed them, Respondents have abused their discretion under the APA. *Noori*, 2025 WL 2800149 at * 10 (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, F.Supp.3d, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, F.Supp.3d, 2025 WL 1898025, * 14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioners are a flight risk or danger to the community before re-detaining them. See e.g., *Fernandez Lopez*, 2025 WL 2959319 at *8; *J.S.H.M v. Wofford*, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub); *Mata Velasquez v. Kurzdorfer*, F.Supp.3d, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process).

Further, Courts within this Circuit and nationwide are routinely granting immediate release to ameliorate unlawful detention. See, e.g., *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065, 2025 WL 3314420, at *32-33 (E.D.N.Y. Nov. 28, 2025) (concluding that where ICE detained the Petitioner "under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)," then "a post-deprivation bond hearing before a DHS

officer or even an immigration judge would provide no genuine opportunity for relief because the detention without adequate pre-deprivation procedures has already been carried out."); *Morales Mendez v. Field Office Director,* No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y., March 16, 2026) (where "[p]etitioner's detention violates her rights under the Due Process Clause of the Fifth Amendment… [t]he appropriate remedy is release"); *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025) (Sannes, C.J.) (ordering immediate release in matter wherein detention was unlawful); *Solano v. Mason,* No. 2:26-cv-00045 (S.D.W.Va., Feb. 4, 2026) (ordering immediate release of detained noncitizen because "this Court has no faith that the Government would comply with an order to hold a bond hearing" and because "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence," also finding that a bond hearing would be futile because noncitizens are being "systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier" and therefore there is "no chance any hearing that occurred would comport with due process.").

UNLAWFUL ARREST WITHOUT A WARRANT

The section of law that governs detention of non-citizens in the United States is 8 U.S.C. § 1226(a). Section 1226(a) plainly states: "On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained . . . ." As such, it follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).

ICE has been routinely arresting non-citizens without a warrant and alleging that the detention was authorized under § 1225(b).

The Second Circuit has ruled that a Petitioner similarly situated, that is, who is encountered inside the United States, cannot be detained under 8 U.S.C. § 1225(b). Thus, Petitioners could only have been detained under section 1226(a).

Indeed, the INA authorizes warrantless immigration arrests only in narrow circumstances. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has "reason to believe" the person is violating the immigration laws ***and*** the person "is likely to escape before a warrant can be obtained . . . ." *See* 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii) (similar). The statute also permits certain warrantless criminal-law arrests under § 1357(a)(5), but only when the offense occurs in the officer's presence or when the officer has reasonable grounds to believe a felony has been committed and there is a likelihood of escape before a warrant can be obtained. *See* 8 U.S.C. § 1357(a)(5)(A)-(B).

Further, the law is clear that, to comport with the Fourth Amendment, the "reason to believe" standard for a civil immigration arrest under the INA is "the equivalent of probable cause." *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222-23 (D.C. Cir. 1971); *see also Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase `has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975) ("The words [in § 1357] of the statute `reason to believe' are properly taken to signify probable cause."). Put simply, immigration enforcement officers may conduct a warrantless civil immigration arrest only if they have probable cause to believe that a person is both in the United States unlawfully *and* an escape risk. *Escobar Molina v. U.S. Dept. of Homeland Security*, 811 F. Supp. 3d 1, 30 (D.D.C. December 2, 2025).

Whether a person is likely to escape before an administrative warrant can be obtained requires an individualized determination based on knowledge of facts "particularized with respect to that person." *Barham v. Ramsey,* 434 F.3d 565, 573 (D.C. Cir. 2006) (quoting *Ybarra v. Illinois,* 444 U.S. 85, 91, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979)). The facts informing this assessment may vary. Some courts have found the likelihood of escape to be higher when, for example, the noncitizen presented "conflicting documents," *Yam v. Immigr. & Naturalization Serv.,* 411 F.2d 683, 687 (D.C. Cir. 1969); "had been `picked up before,'" *Aguirre v. Immigr. & Naturalization Serv.,* 553 F.2d 501, 502 (5th Cir. 1977); admitted that he had previously been removed, *United States v. Puebla-Zamora,* 996 F.3d 535, 538 (8th Cir. 2021); or appeared "extremely nervous" as if "looking for an opportunity to run," *United States v. Meza-Campos,* 500 F.2d 33, 34 (9th Cir. 1974). Courts have also made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties. *See, e.g., La Franca v. Immigr. & Naturalization Serv.,* 413 F.2d 686, 689 (2d Cir. 1969) (noting that being "the owner and operator of a bakery in Jersey City" lowered petitioner's likelihood of escape before a warrant could be obtained); *United States v. Abdi,* No. 04-cr-88 (ALM), 2005 WL 6119695, at *6 (S.D. Ohio Sept. 12, 2005), *rev'd on other grounds,* 463 F.3d 547 (6th Cir. 2006) (no probable cause for escape risk where defendant owned a business, leased property, lived with his then-pregnant wife and two children, and had family in the area); *United States v. Pacheco-Alvarez,* 227 F. Supp. 3d 863, 890 (S.D. Ohio 2016) (same, where defendant had a stable job, lived with his fiancé, and helped pay her rent and raise her two children); *United States v. Khan,* 324 F. Supp. 2d 1177, 1187 (D. Colo. 2004) (same, where defendant worked two jobs, owned a vehicle, paid rent, and never experienced legal trouble before his immigration arrest).

Numerous federal courts have recognized that these warrantless-arrest authorities are strictly limited, particularly in the interior-arrest context. In *Salazar v. Dedos*, No. 1:26-cv-0251 WJ/JHR, 2026 WL 555336, at *5-6 (D.N.M. Feb. 27, 2026), the court rejected DHS's attempt to justify a warrantless interior arrest under § 1357 where none of the statute's narrow prerequisites were met. *See* 2026 WL 555336, at *5-6. Salazar had lived in the United States since infancy, had no criminal history, had never previously been in immigration custody, and was arrested by ICE in the interior without a warrant and without any contemporaneous criminal conduct. *See id.* at *1. The court emphasized that the INA authorizes warrantless immigration arrests only in "limited circumstances," specifically those enumerated in § 1357(a)(2) and § 1357(a)(5), and it found that "[n]one of those circumstances" were present. *See id.* at *5 (citing 8 U.S.C. § 1357(a)(2), (5)(A)-(B)). Because DHS lacked statutory authority to arrest Salazar without a warrant, the court held that the government was required to obtain a prompt judicial probable-cause determination. *See id.* at *6 (citing *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 107-08 (1975)). DHS had obtained no such determination, and the record contained no evidence that officers had any basis to believe Salazar was likely to escape before a warrant could be obtained. *Id.* Given these facts, the court concluded that Salazar's continued detention was "unreasonable under the Fourth Amendment" and ordered his immediate release. *Id.*

CONCLUSION

For the reasons stated above, Petitioner should be ordered immediately released from immigration custody and Respondents should be enjoined from detaining or deporting him pending resolution of their immigration matters before the Executive Office for Immigration Review (including any Petition for Review to a Circuit Court of Appeals).

Dated: June 24, 2026

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