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

EDWIN MACARIO GONZALEZ,
***Petitioner*,**

v.

PHILIP RHONEY,
In his official capacity as Acting Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement;

DAVID VENTURELLA,
In his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

TODD BLANCHE ,
In his official capacity as U.S. Attorney General;

MARKWAYNE MULLIN,
In his official capacity as Secretary of Homeland Security,

Respondents.

Civil Action No.

Immigration No.

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW

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FACTS AND PRELIMINARY STATEMENT

1. Petitioner Edwin Macario Gonzalez is a citizen of Guatemala who entered the United States without inspection.

2. Upon information and belief, Petitioner has no criminal convictions on his record.

3. On July 26, 2026, Petitioner was detained by Respondents in West Winfield, New York.

4. Petitioner was taken to the Syracuse ICE ERO Office and detained.

5. Upon information and belief, and based on current ICE practice, no warrant for his arrest, as required under 8 U.S.C. Section 1226(a), had been properly issued prior to Petitioner's arrest, making his current detention by ICE illegal because ICE did not make any individualized determination that Petitioner presented a risk of flight.

6. Upon information and belief, Respondents did not assess whether Petitioner presented a flight risk or danger to the community prior to his re-arrest. Nor did Respondents provide Petitioner with a hearing before a neutral decision-maker at which ICE was required to justify his re-detention.

7. The government's abrupt termination of Petitioner's liberty without notice or a hearing violates the Due Process Clause of the Fifth Amendment.

8. Petitioner's continued detention serves no legitimate immigration purpose and violates the fundamental liberty protections guaranteed by the Fifth Amendment.

9. Respondents are likely to assert that they have authority to detain Petitioner under 8 U.S.C. Section 1225(b), which has been found to be legally incorrect. *Da Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026).

10. The mandatory detention of Petitioner without an individualized bond determination violated and continues to violate Petitioner's Fifth Amendment due process rights.

11. Without relief from this Court, Petitioner faces the prospect of numerous months, or even years, in immigration custody, as he continues to seek asylum and related relief.

12. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release, or in the alternative, his immediate release unless Respondents provide a bond hearing under § 1226(a) within three days, and properly place the burden of proof on the government to show by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.

THE PARTIES

13. Petitioner is detained in the custody of ICE. He is being detained in the custody of the Syracuse ICE Sub- Office, which falls under the Buffalo ICE Field Office. His custody and governmental actions related to his removal are likewise controlled by the Buffalo Field Office.

14. Respondent Philip Rhoney is the Buffalo, NY Acting Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F,3d 688, 690 (lst Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Rhoney's office is at 250 Delaware Avenue, Floor 7, Buffalo, NY 14202 and/or at the Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, NY 14020.

15. Respondent Todd Blanche is the Acting U.S. Attorney General and is in charge of the Executive Office for Immigration Review, which controls the Immigration Courts and the Board of Immigration Appeals.

16. Petitioner's custody and the governmental actions related to his potential removal from the district are likewise controlled by Respondents Venturella and Mullin.

CUSTODY

17. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). The Deportation Officer responsible for his case is stationed at the Buffalo Federal Detention Facility ("BFDF"). The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. SUBJECT MATTER JURISDICTION

18. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

19. This Court has jurisdiction under 28 U.S.C, § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

II. PERSONAL JURISDICTION

20. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically within the district).[1]

III. VENUE

[1] Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interests of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

21. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973), venue lies in the United States District Court for the Western District of New York, the judicial district in which Petitioner is being detained. Petitioner is being detained at the BFDF and his detention falls under the jurisdiction of the ICE Field Office of Buffalo, New York, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

LEGAL FRAMEWORK WITH RESPECT TO DETENTION AUTHORITY AND BOND ELIGIBILITY

22. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

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

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

26. This case concerns the detention provisions at §§ 1226(a) and 1225(b).

27. The detention provisions at § 1226(a) and § 1225(b) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section

1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

28. Immigration authorities allege that the detention authority that initially vests in them under 8 U.S.C. § 1225(b) never expires, and permits indefinite mandatory detention with no due process right to a bond hearing, even where a noncitizen has resided in the country for years, or even decades before being re-detained by them.

29. However, 8 U.S.C. § 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" and "the context of § 1225 as a whole supports a limited scope for § 1225(b)," which "strongly indicates that the statute governs the entrance of noncitizens to the United States." *Da Cunha v. Freden*, No. 25-CV-6532-MAV, 2025 WL 3280575, (W.D.N.Y. Nov. 25, 2025).

30. The Second Circuit has spoken on this issue, finding that individuals who are detained in the interior of the country, as opposed to those who are detained at the border and who are "seeking admission," cannot be detained under 8 U.S.C. § 1225(b). *Da Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026).

LEGAL FRAMEWORK WITH RESPECT TO WARRANTS FOR DETENTION

31. 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 . . . ."

32. As such, it follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).

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

34. 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).

35. Thus, Petitioner could only have been detained under section 1226(a).

36. 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).

37. 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).

38. 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).

39. 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.*

40. In the face of significant federal overreach and unlawful actions by ICE, many federal courts, including courts within this circuit, are increasingly holding that where the Government did not comply with the plain language of § 1226(a) and no warrant was properly

issued, immediate release is justified and warranted. See, e.g., *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.) (ordering immediate release in matter wherein detention was unlawful due to warrantless arrest); *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 due to warrantless arrest). *See also Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025) ("Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)."); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion); *A.E.R.T. v. Wofford,* No. 1:25-cv-01824-KES-SKO (HC) (E.D. Cal. Dec. 16, 2025) (reaching same conclusion).

LEGAL FRAMEWORK WITH RESPECT TO LIBERTY INTEREST

41. "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). Petitioner's interest in not being detained is "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.*

42. 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.

43. 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 himself, 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).

44. 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, they 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).

45. 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 Petitioner is a flight risk or danger to the community before re-detaining him. 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).

46. Further, Courts within this Circuit and nationwide are routinely granting immediate release to ameliorate unlawful detention. See, e.g., *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.) (ordering immediate release in matter where detention was unlawful); *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.").

THE BURDEN OF PROOF IN BOND HEARINGS

47. In *Jennings*, "the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does."[2] *Darko v. Sessions*, 342 F. Supp. 3d 429, 434-35 (S.D.N.Y. 2018); see *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019) (noting that section "1226(a) is silent on the issues of which party bears the burden of proof at a custody redetermination hearing and the quantum of evidence necessary to satisfy that burden"). Since *Jennings*, however, "a number of district courts have taken up the question left open by the Supreme Court, and there has emerged a consensus view that where, as here, the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Darko*, 342 F. Supp. 3d at 435 (collecting cases).

48. This includes several courts in this District. See *Adejola*, 408 F. Supp. 3d at 287 (Wolford, J.) ("This Court. concludes that the Fifth Amendment's Due Process Clause requires the [g]overnment to bear the burden of proving, by clear and convincing evidence, that detention is justified at a bond hearing under [section] 1226(a)." (citation and internal quotation marks

[2] "The Fifth Amendment's Due Process Clause forbids the [g]overnment to 'depriv[e]' any 'person . of . liberty . without due process of law.' " *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. It "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." Id. at 693, 121 S.Ct. 2491; see also *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("No one disputes that the Fifth Amendment entitles noncitizens to due process of law." (citing Reno v. Flores, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))).

omitted)); *Aparicio-Villatoro v. Barr*, 2019 WL 3859013, at *5-7 (W.D.N.Y. Aug. 16, 2019) (Telesca, J.) ("The Court agrees with the district court cases holding that allocating the burden to a noncriminal alien to prove he should be released on bond under [section] 1226(a) violates due process because it asks '[t]he individual . to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the [government].' " (quoting *Addington v. Texas*, 441 U.S. 418, 427, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979))). And more recently, in three cases like this one involving the misclassification of detention authority, Judge Vacca ordered the respondents to "conduct a constitutionally adequate bond hearing . where the [g]overnment bears the burden of proving by clear and convincing evidence that [the p]etitioner[']s continued detention is justified based on his dangerousness to the community or risk of flight."See *Rezende v. Bondi*, Case No. 6:25-cv-6538, Docket Item 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No. 6:25-cv-6532, Docket Item 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 6:25-cv-6528, Docket Item 20 (W.D.N.Y. Oct. 17, 2025); but see *Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *7 (breaking with the other judge's decisions in the same district and holding that the burden being on the non-citizen does not violate due process for purposes of the "initial bond hearing").

49. Chief Judge Wolford explained that she "continues to be of the view that the Due Process Clause requires that individuals detained under [section] 1226(a) be provided a bond hearing at which the government bears the burden of proving by clear and convincing evidence that the individual is either a danger to the community or a flight risk, and where the immigration judge must consider non-bond alternatives to detention or, if setting a bond, ability to pay"); B.S. v. Joyce, 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."); *Jimenez v. Decker*, 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (finding that "[r]espondents' interpretation of the Second Circuit's decision as holding that allocating the burden on the detainee at an initial bond hearing 'does not violate due process absent prolonged detention' proves too much").

50. The argument for burden shifting to where it belongs – on the government -- is even more pronounced where a detained non-citizen has been in custody for a lengthy period of time. The Second Circuit has held that "serious constitutional concerns" would arise absent "some procedural safeguard in place for immigrants detained for months without a hearing." *Lora v. Shanahan*, 804 F.3d 601, 614 (2d Cir. 2015); quoted by *Black v. Decker,* 103 F. 4th 133, 145 (2d. Cir. 2024) ("The Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under section 1226(c) without a bond hearing; at some point, additional procedural protections—like a bond hearing—become necessary.").

51. Indeed, in *Black v. Decker*, the Second Circuit stated that "*Demore* and *Zadvydas* imply, we agree, that any immigration detention exceeding six months without a bond hearing raises serious due process concerns" and that "The Supreme Court's jurisprudence regarding the government's authority to detain removable noncitizens under 8 U.S.C. § 1231(a)(6), while not binding here, is instructive," that jurisprudence being the holding in *Zadvydas v. Davis* where it recognized a "presumptively reasonable period of detention" of "six months," and required that beyond this period, if "there is no significant likelihood of removal in the reasonably foreseeable future, the Government ... respond with evidence sufficient to rebut that showing" to justify continued detention. *Black,* 103 F.4th at 150; citing *Zadvydas v. Davis*, 533 U.S. at 701.

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

52. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

53. The mandatory detention provisions at 8 U.S.C. § 1225(b)(1) and (2) do not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country on parole and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a).

54. The application of § 1225(b) to Petitioner unlawfully mandates his continued detention and violates the INA.

55. Upon information and belief, Respondents have detained Petitioner without a warrant as required by the plain language of 8 U.S.C. § 1226(a).

56. Respondent's detention of Petitioner in violation of the warrant requirement also violates the INA.

COUNT 2: VIOLATION OF DUE PROCESS

57. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

58. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government

custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

59. Petitioner has a fundamental interest in liberty and being free from official restraint.

60. The government's detention of Petitioner without any pre-deprivation process was unlawful.

61. Petitioner has a substantial liberty interest in remaining free from physical detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Petitioner applied for asylum, was provided with work authorization, and diligently followed the laws of the United States in his pursuit of protection from persecution.

62. Because of Petitioner's profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

63. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

64. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

65. The Immigration Courts, when they accept jurisdiction over bond, improperly place the burden of proof on the detained noncitizen. The Second Circuit has held that "shifting

the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez v. Decker*, 978 F. 3d 842, 853 (2d. Cir. 2020) (holding that requiring the Government to prove that [a detained noncitizen] is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention "strikes a fair balance between the rights of the individual and the legitimate concerns of the state.").

66. Even in many instances where the burden has been shifted to the government upon the order of a federal judge, Immigration Judges are increasingly finding "flight risk" and denying bond to non-citizens, bowing to pressure from the Trump administration.

67. The immigration courts under this administration have essentially become "kangaroo courts" where due process is not respected[3], due to political pressure on immigration judges to satisfy the administration's thirst for mass deportations. The only appropriate remedy for the current state of affairs is for immediate release to be ordered by federal judges, as due process is otherwise violated.

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[3] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview; see also *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp; Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/; Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside; Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste m-jeopardy-due-trumps-firings/409544/.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order that Respondents not transfer the Petitioner outside of this District during the pendency of this Petition;

(3) Expedite consideration of this action pursuant to 28 U.S.C. § 1657;

(4) Declare that Petitioner's detention violates the INA and the Due Process Clause of the Fifth Amendment;

(5) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and not re-detain Petitioner without a pre-deprivation hearing at which the government bears the burden to demonstrate, by clear and convincing evidence, that the petitioner is a danger to the community or a flight risk and at which the immigration judge must consider non-bond alternatives to detention or, if setting a bond, the petitioner's ability to pay;

(6) In the alternative, order a bond hearing to take place within 3 days and where the burden is properly placed on the government to prove by clear and convincing evidence that Petitioner is a flight risk or a danger to the community; and where consideration must be given to whether any Alternatives to Detention (ATDs) could satisfy the government's interests in lieu of continued detention, as well as the Petitioner's ability to pay any monetary bond amount that is set;

(7) Order Respondents to immediately return all of Petitioner's seized personal property, including but not limited to any government-issued identification or immigration documents, such as a state driver's license or Employment Authorization Document (EAD) to the extent such items were seized and remain in Respondents' possession;

(8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(9) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law.

Dated: July 26, 2026

/s/ Matthew K. Borowski

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

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: July 26, 2026

/s/ Matthew K. Borowski

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