

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

YEFRY VALDEZ,

Petitioner,

v.

William JOYCE, in his official capacity as District Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General.

Respondents.

Case No. 1:25-cv-04627

**FIRST AMENDED
PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Yefry Valdez is a citizen of the Dominican Republic who was detained on June 2, 2025, as he attended his hearing at immigration court in Manhattan. On information and belief, his detention is part of a campaign underway by Respondents to detain individuals who have been present in the U.S. for under two years at the time they attend their immigration court hearings. Respondents seek dismissal of ongoing removal proceedings, even for individuals like Mr. Valdez who have submitted timely applications for asylum, and whatever the decision by an Immigration Judge on that motion—whether the motion is granted, denied, or no decision is made—masked, plainclothes agents encircle, handcuff and detain people after they leave the courtroom. Mr. Valdez’s detention as part of this campaign is unlawful and he brings this petition seeking his immediate release.

PARTIES

1. Petitioner Yefry Valdez is a citizen of the Dominican Republic who lives in New York City. He attended his regularly scheduled court appearance before an immigration court in Manhattan on June 2, 2025 and was detained by Respondents.
2. Respondent William Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent William Joyce’s address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.
3. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Wolf’s address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.
4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review (“EOIR”), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner’s removal and custody proceedings and for the standards

used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on June 2, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this Court because Mr. Valdez was detained in the Southern District of New York at the time of filing.

SPECIFIC FACTS ABOUT PETITIONER

8. Yefry Valdez is a citizen of the Dominican Republic who has been in the U.S. since April 2024. His removal proceedings were initiated at the Buffalo immigration court that same month. He was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection. On October 28, 2024, he filed a timely application for asylum, withholding of removal, and protection under the Convention Against Torture. Exhs. C, D to Lopez Decl. The basis of his asylum claim are death threats that he faced after advocating for individuals who murdered his cousin to be brought to justice. His advocacy caused his name and identity, including his work for

the military, to be publicized. *See* Lopez Decl. at ¶ 11-12.

9. Mr. Valdez moved to New York City and updated his address with the court. *See* Exh. E to Lopez Decl. (hearing notice). He attended his immigration court date on April 9, 2025 this year, taking an approximately nine-hour bus ride to Buffalo for the purpose of attending. *See* Exh. E to Lopez Decl. (bus ticket)

10. At that hearing, his case was transferred to the New York City immigration court. Exh. C to Lopez Decl. (EOIR case history). Earlier this week, on June 2, 2025, Mr. Valdez appeared unrepresented for his previously scheduled hearing at the New York City immigration court. At his hearing, ICE moved to dismiss his removal proceedings based on changed circumstances, namely Respondents' expansion of expedited removal in January 2025. Lopez Decl. at ¶ 4. Mr. Valdez opposed the dismissal. *Id.* The Immigration Judge did not grant ICE's motion to dismiss. Instead, the IJ adjourned the hearing and set a new hearing date of July 7, 2025. *Id.*

11. Yet, as Mr. Valdez left the immigration courtroom, he was detained by plainclothes officers. *Id.* at ¶ 6.

12. On information and belief, the sole basis for Respondents' re-detention of Mr. Valdez is its own campaign to expand the use of expedited removal against individuals in active and ongoing immigration court proceedings, not any change in the individual factors in his case.

13. Counsel has been unable to communicate with Mr. Valdez since his detention. On June 4 and 5, the ICE locator website indicated he was detained at the Nassau County Correctional Center, a facility which provides no access to phone calls or visits for detainees in ICE custody. *Id.* at ¶

13. Then, in response to counsel's request for a legal call on June 5, the jail represented he was no longer present. *Id.*

CAMPAIGN OF DETENTIONS

14. On or about May 20, 2025, Respondents began a nationwide campaign to seek dismissal of

removal proceedings for people present in the U.S. for under two years and to detain individuals immediately after their appearance in immigration court. The two-part strategy involves close coordination between Department of Homeland Security (DHS) attorneys inside immigration courtrooms, who seek dismissal, and plainclothes agents outside the courtroom, who then detain people leaving. *See* Hamid Aleaziz et al, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025 (attached as Exh. A to Lopez Decl.).

15. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. Lopez Decl. at 3. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of protests such as that the person has minor children or medical conditions. Gwynne Hogan, *ICE Agents Arrest at Least Seven Immigrants as Courthouse Blitz Continues*, The City, May 29, 2025 (attached as Exh. B to Lopez Decl.).

16. Attorneys from Make the Road New York have witnessed many of these hearings and detentions firsthand, including that of Mr. Valdez, and observed people detained irrespective of whether motions to dismiss are granted; denied; or set over for further consideration. Lopez Decl. at ¶ 3.

17. Once detained, New Yorkers targeted by this campaign vanish for several days. Family members may not hear from them and the ICE locator, an online portal, often does not reflect their location for several days or reflects a detention center at which (according to facility staff there) detainees are not actually present. Lopez Decl. at ¶ 13.

18. In some cases of those with ongoing immigration court proceedings under 8 U.S.C. § 1229a, like Mr. Valdez, ICE then swiftly moves to transfer the case to the place of detention such as Texas.

19. ICE has not stated publicly whether a pending asylum application will be sufficient to trigger a credible fear interview. It is also not clear if individuals such as Mr. Valdez, for whom a

a removal case remains pending before the immigration court, will nonetheless be subject to expedited removal.

LEGAL FRAMEWORK – REMOVAL PROCEEDINGS

20. The Immigration & Nationality Act (“INA”) provides for removal proceedings in immigration court to be the “sole and exclusive” procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. § 1229a. Section 1229a(a)(3) states that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”¹

21. “Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service.” 8 C.F.R. § 1003.14(a). To prevent confusion and streamline jurisdiction particularly in asylum cases, the INA’s implementing regulations state that “[w]hen an Immigration Judge has jurisdiction over an underlying proceeding, *sole* jurisdiction over applications for asylum shall lie with the Immigration Judge.” 8 C.F.R. § 1003.14(b) (emphasis added). The regulations contemplate clarity—not chaos—over the jurisdiction of immigration courts in removal proceedings.

22. The exclusivity of such proceedings is further reinforced by the fact that, the only means to terminate the jurisdiction of the immigration court is a motion to dismiss or terminate. Dismissal in most cases requires that “Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.” 8 C.F.R. § 239.2(a)(7).

23. Petitioner is currently in removal proceedings under Section 1229a under the jurisdiction

¹ “Attorney General” in Section 1254a now refers to the Secretary of the Department of Homeland Security. See 8 U.S.C. 1103; 6 U.S.C. 557.

of the New York City Immigration Court. His proceedings remain pending, with a next court date on July 7, 2025.

24. Certain noncitizens may be ordered removed by an immigration officer through alternative expedited removal procedures described in 8 U.S.C. § 1225(b). Expedited removal is a one- or two-stage process: the first is inspection by an immigration officer; the second, where applicable, is a credible fear interview by an asylum officer. For an individual who applies for admission at a port of entry, the immigration officer must first determine if the individual is a noncitizen who is inadmissible either because they have engaged in fraud or lack valid entry documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). If an individual claims to be a U.S. citizen, lawful permanent resident, or refugee, or to have been granted asylum, then the individual is entitled to limited additional review. *See* 8 U.S.C. § 1225(b)(1)(C); 8 C.F.R. § 235.3(b)(5). Otherwise, if the officer concludes that the individual is inadmissible under either ground, the officer “shall” order the individual removed “without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i). At any time during the process, the officer may allow the person to withdraw his or her application for admission and leave the country. 8 U.S.C. § 1225(a)(4).

LEGAL FRAMEWORK - DETENTION

25. The Fifth Amendment requires that detention be “reasonabl[y] relat[ed]” to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). Immigration detention during the pendency of removal proceedings is authorized by statute for the purpose of mitigating flight risk and preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 620 (2001); *Demore v. Kim*, 538 U.S. 510, 528 (2003).

26. A person’s liberty cannot be infringed upon without “adequate procedural protections.”

Zadvydas, 533 U.S. at 690-91. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole and probation. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). By the same token, noncitizens have a liberty interest in continued freedom from civil immigration confinement. *See*, e.g., *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the non-citizen petitioner had a “liberty interest in remaining out of [immigration] custody”); *see also Meza v. Bonnar*, No. 18-CV-02708-BLF, 2018 WL 2554572, at *3 (N.D. Cal. June 4, 2018) (finding petitioner likely to succeed in her claim that she had a “vested interest” in her continued release from immigration detention and noting “due process would seem to require an administrative hearing to show a material change in circumstances” prior to re-detention).

27. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

28. At a minimum, in the context of revocation of civil release, “an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.” *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF THE IMMIGRATION AND NATIONALITY
ACT , 8 U.S.C. § 1229a, AND IMPLEMENTING REGULATIONS**

29. Petitioners reallege and incorporate by reference each and every allegation contained above.

30. Section 1229a of Title 8 of the U.S. Code provides that, [u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”

31. Expedited removal proceedings constitute a distinct removal mechanism that operates separate from, and cannot run concurrently with, proceedings under Section 1229a. 8 U.S.C. § 1225(b)(1). Congress created limited exceptions where the two processes meet—specifically, individuals whose removal proceedings originate as expedited removal proceedings can have their cases transferred to regular Section 1229a removal proceedings, if they satisfy various requirements to show they have a credible fear of persecution. But the reverse is not true: Congress has *not* authorized the sudden transfer, conversion, or disregard of Section 1229a immigration court proceedings into expedited removal proceedings.

32. Petitioner is in Section 1229a removal proceedings and such proceedings are ongoing. His proceedings originated as Section 1229a removal proceedings. No determination has yet been made as to whether Petitioner is to be removed from the United States in such proceedings.

33. Respondents’ motion for dismissal of Petitioner’s removal proceedings as part of its campaign to expand its use of expedited removal proceedings contravened Section 1229’s clear jurisdictional framework. Moreover, by detaining Petitioner ostensibly to undergo parallel

expedited removal proceedings while Section 1229a proceedings remain pending, Respondents have impermissibly created parallel processes that undermine Section 1229a's clear mandate for a single, coherent removal process.

34. Respondents' actions also violate the *Accardi* doctrine and Respondents' own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to obey their own regulations). According to their own regulations, Respondents lack the authority to force Petitioner to defend himself against removal simultaneously in two parallel removal proceedings. Governing regulations explicitly confer "sole jurisdiction" over applications for asylum on immigration judges presiding under Section 1229a removal proceedings. 8 C.F.R. § 1003.14(b). Petitioner exercised his statutory right to apply for asylum before an immigration judge on October 28, 2024. 8 U.S.C. § 1158(a). His sudden detention and Respondents' attempt to dismiss his case and change the removal regime to which he is subject violates that right.

35. Further, according to their own regulations, Respondents cannot lawfully dismiss or move to dismiss Petitioner's proceedings absent a change in the circumstances of *his case*. See 8 C.F.R. § 239.2(a)(7). There has been no change in the circumstances of his case. Despite that, Respondents have moved to dismiss his proceedings. Respondents' actions violate the Immigration and Nationality Act and implementing regulations.

36. Respondents' actions in seeking the dismissal of Mr. Valdez's proceedings were part of a coordinated plan culminating in his detention.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (DETENTION)

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

38. 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 generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

39. Petitioner's detention violates the Due Process Clause because he has not been accorded *any* process much less sufficient process prior to his sudden redetention and because no change in Petitioner's case compels a change in his custody status. His current detention is not rationally related to any immigration purpose; it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning him; and it lacks any statutory authorization. Mr. Valdez does not pose a flight risk; to the contrary, he has voluntarily appeared in immigration court repeatedly, including when he took a nine-hour bus ride to attend court in Buffalo just two months ago, before successfully changing venue to New York City. He filed a timely asylum application. He has no criminal history and does not pose a danger.

40. Mr. Valdez was accorded no process nor notice prior to his sudden re-detention by ICE. ICE has made no effort to justify his redetention based on any individualized assessment or factors in his case.

41. His detention also interferes with Petitioner's ability to oppose Respondents' motion to dismiss his removal proceedings, as he remains incommunicado and inaccessible to his counsel days later and the venue for his removal case is unclear.

COUNT THREE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (DISMISSAL AND EXPEDITED REMOVAL)

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

43. ICE's policy of seeking dismissal of removal proceedings that were lawfully commenced,

thereby cutting off Mr. Valdez's ability to proceed on his pending asylum (and related humanitarian relief) application, violates his constitutional right to due process.

44. Further, to the extent Respondents rely on a new expanded view of its expedited removal authority, subjecting Petitioner to such proceedings is unlawful because it violates the long-held doctrine that new rules may not be applied retroactively in the absence of a clear congressional grant of retroactive rulemaking authority. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). In this case, on information and belief, Respondents purport to have the authority to subject Respondent to expedited removal pursuant to the January 24, 2025 Federal Register Notice expanding expedited removal to its full legislative scope. DHS, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025). But the Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen*, 488 U.S. at 208. To do so would add "new legal consequences to events completed [prior to the expansion]." *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994).

45. Because Congress did not grant DHS the power to retroactively expand expedited removal, DHS cannot subject Respondent, whose removal proceedings were initiated before the January 2025 expansion, to expedited removal.

COUNT FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

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

47. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious. Moreover, an action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to

the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

48. Respondents’ detention of Mr. Valdez, absent any individualized assessment and absent changed circumstances in his case giving rise to a new assessment of either flight risk or dangerousness, is arbitrary and capricious.

49. Moreover, its broader policy of seeking dismissal and then detaining individuals like Mr. Valdez, who are in ongoing removal proceedings, is arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Declare that Petitioner’s detention violates the Immigration and Nationality Act and implementing regulations;
4. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Respondents’ actions violate the Administrative Procedure Act;
6. Enjoin Respondents from detaining Petitioner outside of the New York City area;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner

from custody;

8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: June 6, 2025

/s/ Paige Austin
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CERTIFICATE OF SERVICE

I certify that on June 6, 2025, I electronically filed the attached the foregoing First Amended Petition for Writ of Habeas Corpus and accompanying Exhibits and Declarations with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Paige Austin

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