

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DERWIN CAPUNAY GUZMAN,
Petitioner,

v.

WILLIAM P. JOYCE,
in his official capacity as Acting
Field Office Director, New York
City Field Office, U.S.
Immigration & Customs
Enforcement;

KRISTI NOEM,
in her official capacity as
Secretary, U.S. Department of
Homeland Security;

PAMELA BONDI,
in her official capacity as
Attorney General, U.S.
Department of Justice.

Respondents.

Civil Action No. 25-cv-4777

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

INTRODUCTION

Petitioner, Derwin Capunay Guzman, (“Mr. Capunay”), a citizen of Peru, who had been released by Respondents on his own recognizance in April 2024 and was faithfully attending his court dates, was abruptly redetained after his court date on May 29, 2025 in New York, New York. On information and belief, his detention is part of a campaign 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 and entry of an expedited order of removal, even for individuals like Mr. Capunay, 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. Capunay’s redetention—both individually and as part of this campaign—is unlawful and he brings this petition seeking his immediate release or, in the alternative, immediate release pending the result of a pre-deprivation hearing where Respondents bear the burden to justify his redetention.

PARTIES

1. Petitioner Derwin Capunay Guzman is a 34-year-old citizen of Peru who resides in New York City. *See* Exh A., NTA. He was placed in removal proceedings in 2024 and had been attending his immigration court hearings while at liberty until he was abruptly detained by Respondents at immigration court on May 29, 2025 and held at the Orange County Correctional Facility in Goshen, NY. He was informed on June 5, 2025, that he would be transferred to a facility in Louisiana on June 6, 2025.
2. Respondent William P. Joyce is named in his 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, he is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, he is the legal custodian of Petitioner. Respondent Joyce’s office is located at 26 Federal Plaza, New York, NY 10278.
3. Respondent Kristi Noem is named in her official capacity as the Secretary of 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); she routinely transacts business in the Southern District of New York, and she is legally responsible for the pursuit of Petitioner’s

detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, DC 20528.

4. Respondent Pamela 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 bond proceedings and the standards used in those proceedings. As such, she is the legal 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. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 and 2241, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241; *see also Fay v. Noia*, 372 U.S. 391, 430-31 (1963).
6. While only the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review—*see* 8 U.S.C. § 1252(a)(1), (b)—the federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or

constitutionality of their detention by immigration authorities. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

7. Venue is proper in the Southern District of New York under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. The Petitioner is presently detained at the direction of Mr. Joyce, and a substantial part of the events giving rise to the claims and relevant facts occurred within this district.
8. Mr. Capunay had been detained by Respondents at Orange County Correctional Facility, in Goshen, NY, until June 4 or June 5, 2025, which is within the Southern District of New York. *See* 28 U.S.C. § 1391(e); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 495-97 (S.D.N.Y. 2009). On information and belief, he remains detained by Respondents within the Southern District of New York pending his transfer to Louisiana tomorrow, June 6, 2025.

STATEMENT OF FACTS

Mr. Capunay's Entry and Removal Proceedings to Date

9. Petitioner Derwin Capunay Guzman ("Mr. Capunay") is a 34-year-old citizen of Peru who arrived in the United States on or around April 2024. After his arrival, he was detained by immigration authorities for about two days, and then released on his own recognizance.
10. A document produced by the Department of Homeland Security, form "I-213," states in a narrative section dated April 26, 2024, that "[t]he subject does not appear to be a threat to national security, border security, or public safety. The subject was released from the custody of the Department of Homeland Security (DHS) by "Order of Recognizance" (O.R.) pending their immigration hearing. This release was authorized through proper channels in accordance with San Diego Sector protocols."

11. Mr. Capunay was served with a Notice to Appear (“NTA”) on April 26, 2024 and scheduled for initial master hearing on August 26, 2024 at the Varick Street Immigration Court in New York, NY before Immigration Judge Billings.
12. He attended court as scheduled on August 26, 2024 and the Immigration Judge (“IJ”) adjourned proceedings to October 31, 2024.
13. He again attended court as scheduled on October 31, 2024. At this hearing, the IJ advised Mr. Capunay of the terms of the “one year filing deadline” for any asylum application and adjourned proceedings to May 29, 2025.
14. Mr. Capunay filed Form I-589, application for asylum, withholding of removal and protection under the convention against torture, with the court on March 12, 2025, less than one year after his entry to the United States.
15. He again attended court as scheduled on May 29, 2025. At the May 29, 2025 hearing, on information and belief, DHS orally moved to dismiss his removal proceedings. IJ Billings asked DHS for the motion in writing. As of the filing of this Petition, there is no written motion in the electronic record of proceedings (“EROP”). The IJ adjourned proceedings to December 11, 2025.
16. Respondents ICE detained Mr. Capunay without notice and without providing a reason or justification immediately following the May 29, 2025 hearing and incarcerated him at the Orange County Correctional Facility (“OCJ”). His proceedings were then rescheduled for June 3, 2025 with IJ Reid.
17. On June 2, 2025, DHS filed form I-213 as the entirety of their evidentiary submission.
18. On June 3, 2025, Mr. Capunay appeared in court as a detained respondent. IJ Reid adjourned proceedings to June 17, 2025.

19. On June 4, 2025, Mr. Capunay retained The Bronx Defenders as removal defense counsel and attorney Michael Leonetti entered his appearance through the electronic case filing system (“ECAS”).
20. On June 5, 2025, DHS filed form I-830, showing a detention transfer scheduled for June 6, 2025 to Allen Parish Public Safety Complex, 7340 Highway 26 W Oberlin, LA 70655.
21. Shortly thereafter, removal defense counsel filed a “motion to retain case” arguing that the IJ should not change the venue of Mr. Capunay’s proceedings based on DHS form I-830 alone, and instead should only consider changing venue upon receipt of an official motion to change venue and after providing Mr. Capunay time to respond to any such motion.
22. At this time, Mr. Capunay’s next hearing remains scheduled for June 17, 2025 before Immigration Judge Reid in New York.

ICE’s Abrupt Change in Policies on Removal Proceedings and Detention

23. 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. Once removal proceedings are dismissed, Respondents then issue orders of expedited removal.
24. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. 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.

25. Attorneys from legal services organization such as The Bronx Defenders have witnessed some of these detentions firsthand and observed people detained irrespective of whether ICE's motions to dismiss are granted; denied; or set over for further consideration.
26. 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.
27. In some cases of those with ongoing proceedings, like Mr. Capunay, ICE then swiftly moves to transfer the noncitizen to far-flung detention facilities and attempts to move proceedings to the corresponding jurisdiction.
28. ICE has not stated publicly whether a pending asylum application will be sufficient to trigger a credible fear interview—a way to stave off expedited removal for noncitizens who have a fear of persecution or torture in their home country.

LEGAL FRAMEWORK

Removal Proceedings Under 8 U.S.C. § 1229a

29. The INA provides for removal proceedings 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

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.

30. “Jurisdiction vests, and proceedings before an Immigration Judge, when a charging document is filed with the Immigration Court by the Service.” 8 C.F.R. § 1003.14(a). The only means to terminate the jurisdiction of the immigration court is a motion to dismiss or terminate. Dismissal in most cases requires that “[C]ircumstances 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).
31. Petitioner is currently in removal proceedings under section 1229a. His proceedings remain pending, with a next court date later in June 2025.
32. Certain noncitizens may be ordered removed by an immigration officer under the 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). A positive credible fear finding would result in a noncitizen being placed back in “full” removal proceedings. *See Matter of M-S-*, 27 I. & N. Dec. 509, 515 (2019). 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).

Statutory Detention Authority

33. Chapter 8 U.S.C. Section 1226(a) is the discretionary detention statute which provides:

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.

8 U.S.C. § 1226(a)

34. On information and belief, release on “order of recognizance,” is the equivalent of release on “conditional parole.”

Due Process Concerns Regarding ICE Detention and Redetention

35. “In our society liberty is the norm,” and detention is the “carefully limited exception.”

United States v. Salerno, 481 U.S. 739, 755 (1987). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

36. The Fifth Amendment accordingly requires— “[a]t the least”—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); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

37. Incarceration can be used to punish criminal acts but may be imposed only after extensive procedural protections designed to ensure that punishment is warranted and that a person is not unjustly deprived of liberty. *See Santobello v. New York*, 404 U.S. 257, 264 (1971) (Douglas, J., concurring). By contrast, civil detainees “may not be punished.” *Foucha*, 504 U.S. at 80; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Accordingly, the constitutional constraints on civil detention are even higher than in the criminal context. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003) (applying *Salerno* line of cases to civil immigration detention).

38. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in “special and narrow nonpunitive circumstances,” *Zadvydas*, 533 U.S. at 690, and that it must “bear[] [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (*quoting Jackson*, 406 U.S. at 738). Absent a reasonable relation to these governmental objectives, civil detention becomes impermissible punishment. *Bell*, 441 U.S. at 539. In the immigration context, the Supreme Court has recognized only two valid purposes for civil immigration detention—to mitigate a risk of danger to the community and to prevent flight. *Demore*, 538 U.S. at 528.

39. In addition, a person’s liberty cannot be infringed upon without “adequate procedural protections.” *Zadvydas*, 533 U.S. at 690-91; *Hendricks*, 521 U.S. at 357; *see also Addington*, 441 U.S. at 425-27. A long line of Supreme Court precedent recognized the liberty interests

of individuals on conditional release. In those cases, the Supreme Court held that due process requires notice and an opportunity to be heard before the government deprives a person of their conditional liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding liberty interest of individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process of *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the same pre-deprivation process as *Morrissey* provides); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”).

40. In *Morrissey*, the Supreme Court considered the process that was due to a parolee prior to parole revocation. The Court concluded that all “liberty is valuable” and must be seen as within the protection of the due process clause. Therefore, even though parole may be lawfully revoked, “[i]t’s termination calls for some orderly process, however informal.” 408 U.S. at 482. The Court went on to find that while the government may have many interests for returning an individual to imprisonment, it “has no interest in revoking parole without some informal procedural guarantees. . . . Nor are we persuaded by the argument that revocation is so totally a discretionary matter that some form of hearing would be administratively intolerable.” *Id.* at 483.

41. To comport with due process, the Supreme Court concluded that a hearing to determine whether “the individual has in fact breached the conditions of parole” not only serves the individual's protected liberty interests, but also serves the interest of society “in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole . . .” *Id.* at 483-84 (citing *People ex rel. Menechino v. Warden*, 27 N.Y.2d 376, 379, and n. 2 (1971)).
42. This rationale equally applies to the revocation of release on recognizance (also termed “conditional parole” in the INA and redetention by ICE. *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”)). District courts have recognized that non-citizens facing civil redetention share this constitutionally protected interest in their continued liberty. *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 *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised “serious questions going to the merits” that she had a “vested interest” in her continued release from immigration detention). Indeed, as the court in *Ortega* recognized, a petitioner subject to a civil detention scheme has an “arguably greater” liberty interest “than the interest of parolees in *Morrissey*.” *Ortega*, 415 F. Supp. at 970.
43. Because of Mr. Capunay’s protected interest in his liberty while in removal proceedings, the Due Process Clause requires, at a minimum, sufficient procedural protections before the government can strip Mr. Capunay of that liberty. As set forth in *Mathews v. Eldridge*, this Court must consider three factors to determine what procedural protections the Constitution

requires: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. 319, 335 (1976).

44. Ultimately, immigration detention must be reasonably related to its regulatory purposes of ensuring appearances at proceedings and preventing danger, and it cannot be excessive in relation to these purposes. *See Zadvydas*, 533 U.S. at 690.

Detention and Redetention in light of the Administrative Procedure Act

45. The APA creates a presumption in favor of judicial review over agency action. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001). A petitioner “adversely affected” by agency action may seek judicial review through a petition for habeas corpus. 5 U.S.C. §§ 702, 703. A reviewing court must set aside agency action that is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right; (3) in excess of statutory authority or limitations; (4) without observance of procedures required by law; or (5) unwarranted by the facts. 5 U.S.C. §§ 702, 706(2); *Natural Resources Defense Council v. U.S. E.P.A.*, 808 F.3d 556, 569 (2d Cir. 2015).

46. The INA grants ICE the ability to revoke a non-citizen’s immigration release on recognizance. 8 U.S.C. § 1226(b). Notwithstanding the statutory language, in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens; ICE must demonstrate changed circumstances. *See Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D.Ca. Nov 20. 2017) (government conceding that “DHS has incorporated this holding [of *Matter of Sugay*] into its practice.”)

CLAIMS FOR RELIEF

COUNT ONE

RESPONDENTS DISMISSAL ACTION VIOLATES THE IMMIGRATION AND NATIONALITY ACT AND IMPLEMENTING REGULATIONS

47. Petitioners reallege and incorporate by reference each and every allegation contained above.
48. 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.” Petitioner is in Section 1229a removal proceedings and such proceedings are ongoing. No determination has yet been made whether Petitioner is to be removed from the United States in such proceedings.
49. Respondents cannot lawfully dismiss or move to dismiss Petitioner’s proceedings absent a change in the circumstances of his case, yet have done so anyway.
50. Moreover, Petitioner has a statutory right to apply for asylum, which he has done. 8 U.S.C. 1158(a). His sudden detention and Respondents’ attempts to dismiss his case and change the removal regime to which he is subject violates that right.
51. Respondents’ actions violate the Immigration and Nationality Act and implementing regulations.

COUNT TWO

RESPONDENTS’ POLICY OF SEEKING DISMISSAL OF PROCEEDINGS VIOLATES OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

52. Petitioner realleges and incorporates by reference each and every allegation contained above.
53. ICE’s policy of seeking dismissal of proceedings that were lawfully commenced, and thereby cutting off Mr. Capunay’s ability to proceed on his pending asylum (and related humanitarian relief) application, violates his constitutional right to due process.

COUNT THREE
RESPONDENTS' POLICY OF DISMISSAL OF PROCEEDINGS VIOLATES THE
ADMINISTRATIVE PROCEDURE ACT

54. Petitioner realleges and incorporates by reference each and every allegation contained above.
55. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious.
56. Respondents' policy of seeking dismissal and then detaining individuals like Mr. Capunay, who are in ongoing removal proceedings, is arbitrary and capricious.

COUNT FOUR
RESPONDENTS' REDETENTION OF PETITIONER VIOLATES THE DUE PROCESS
CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

57. Petitioner realleges and incorporates by reference each and every allegation contained above.
58. 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).
59. Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in custody status. His 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 Petitioner; and it lacks any statutory authorization. Moreover, he was not accorded sufficient process prior to his sudden redetention by ICE. *See Morrissey*, 408 U.S. at 471 (holding that parole may not be revoked without the minimum due process protections of written notice of the alleged violations, disclosure of adverse evidence, opportunity to present defense evidence and confront witnesses, hearing before a neutral adjudicator, and written statement of fact findings).

COUNT FIVE
RESPONDENTS' REVOCATION OF PETITIONER'S CONDITIONAL PAROLE
AND REDETENTION WITHOUT ESTABLISHING MATERIAL CHANGED
CIRCUMSTANCES VIOLATES THE APA AND INA.

60. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

61. Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

62. As the Supreme Court has explained,

Though the agency's discretion is unfettered at the outset, if it announces and follows-by rule or by settled course of adjudication-a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

INS v. Yueh-Shaio Yang, 519 U.S. 26, 32 (1996).

63. Respondent's redetention of Mr. Capunay and revocation of his release on his own recognizance, without providing any procedural protections and without establishing material changed circumstances justifying redetention, as required by *Matter of Sugay*, 17 I & N. Dec. 637 (BIA 1981) and DHS' own internal policies and practices, *see Saravia*, 280 F.Supp.3d at 1197, was arbitrary and capricious and in violation of Respondents' authority under the INA.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;

- 2) **Enjoin Respondents from transferring Petitioner outside the jurisdiction of the New York Field Office** of Immigration and Customs Enforcement pending the resolution of this case;
- 3) 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;
- 4) Declare that Petitioner's detention violates the Immigration and Nationality Act and implementing regulations;
- 5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- 6) Declare that Respondents' actions violate the Administrative Procedure Act;
- 7) Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance;
- 8) In the alternative, grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance pending the outcome of a pre-deprivation hearing where the Government bears the burden of proof to show changed circumstances to justify redetention.
- 9) 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
- 10) Grant such further relief as this Court deems just and proper.

Dated: June 5, 2025
Brooklyn, New York

Respectfully submitted,

/s/ Jessica Swensen
Jessica Swensen, Esq.
THE BRONX DEFENDERS
360 East 161st Street
Bronx, New York, 10451
347-842-1218
jessicas@bronxdefenders.org
Counsel for Petitioner