UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JHON RODRIGUEZ ORELLANA,

Petitioner,

v.

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director of 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.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Jhon Rodriguez Orellana ("Petitioner" or "Jhon") is a noncitizen asylum seeker from Ecuador. Last month, on June 20, 2025, Respondents handcuffed and detained Jhon as he and his partner, who at the time was eight months pregnant, exited their immigration court hearing. She was forced to watch in horror as Jhon was taken from her just a few weeks before they were due to welcome their first child.

This painful episode was unnecessary—and unlawful. Jhon and his partner followed Respondents' rules and procedures perfectly. After learning about a federal program called "CBP One," they applied for it and received a grant of parole in December 2024. According to its terms, parole would allow them to remain lawfully in the U.S. for about two years. Pursuant to their grant of parole, Jhon and his partner received employment authorization and social security cards. And since then, they attended their immigration court hearings as directed and were in the process of seeking legal assistance to pursue asylum and other humanitarian relief.

Yet on June 20, 2025, Respondents abruptly moved to dismiss Jhon's removal proceedings

without explanation or an adequate opportunity to respond. Respondents then detained him as he left the immigration courtroom. His partner, who was in court with him, had her removal hearing adjourned and is awaiting a future court date. On information and belief, Respondents' purpose in dismissing Jhon's immigration court proceedings was to subject him to expedited removal. But because he entered the U.S. with a grant of parole, he cannot lawfully be subject to expedited removal. His placement into expedited removal proceedings violates the Immigration and Nationality Act and implementing regulations. In fact, Jhon filed a timely appeal of the dismissal of his proceedings, which remains pending with the Board of Immigration Appeals. His custody, meanwhile, violates his right to due process.

Since his arrest, Jhon has been moved at least fives times between detention facilities throughout the country, including inside a *de facto* detention room inside a federal building in Manhattan located at 26 Federal Plaza, from which he was transferred to Long Island, Brooklyn, Texas, only to end up back in New York City earlier this week. According to Respondents' ICE locator, he is currently detained at the Metropolitan Detention Center in Brooklyn, New York. During his time in detention, Jhon has requested to be released—particularly as his partner's delivery date approached [redacted] His release requests have been met with inaccurate information: at one point, Respondents informed Petitioner's counsel that he had already been deported to Ecuador, leading Petitioner's family to grow worried that something had happened to him when they could not locate him in Ecuador. In reality, he had been transferred to another detention facility in Texas. The never-ending transfers have caused Petitioner substantial emotional distress, as he began accepting the possibility that he would never be released to see his partner and witness the birth of their child.

On [redacted], Petitioner's child was born. Despite being in the same state, he remains unable to see them, and he may not hold his child any time soon.

JURISDICTION

1. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens 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 20, 2025.

2. 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.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

4. Administrative exhaustion is unnecessary because it would be futile.

VENUE

5. Venue is proper in this Court because Petitioner is detained by Respondents at the Metropolitan Detention Center ("MDC") in Brooklyn, New York at the time of filing.

REQUIREMENTS OF 28 U.S.C. § 2243

6. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

7. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963)

(emphasis added).

PARTIES

8. 1. Petitioner Jhon Rodriguez Orellana is citizen of Ecuador who until recently lived in New York. He was detained by Respondents when he and his partner, who was eight months pregnant at the time, appeared for their removal proceedings in Manhattan on June 20, 2025.

9. Respondent LaDeon Francis 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 Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

10. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. In this capacity, he is responsible for the operations of ICE, including detention and removal actions. Respondent Lyons' address is U.S. Immigration and Customs Enforcement, 500 12th St SW, Washington, DC, 20024.

11. Respondent Kristi Noem is named in her official capacity as the 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); 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 Noem's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, District of Columbia 20528.

12. 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 Eastern 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.

SPECIFIC FACTS ABOUT PETITIONER

13. Jhon is a citizen of Ecuador who has been living in the U.S. since December 2024. He and his partner, Marilyn Riofrio Bermeo, fled Ecuador after their home was attacked and "bombarded with an explosive and bullets." Exh. A, Declaration of Marilyn Riofrio Bermeo ("Riofrio. Decl.") at ¶4.

14. Jhon and Marilyn entered the U.S. after making an appointment via the "CBP One" application and following the government's process for this lawful pathway to be paroled into the United States. Both were granted humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5) for a period of about two years. *See* Exh. B, Copy of Parole-based Employment Authorization Card for Petitioner's Partner (showing expiration date of December 17, 2026).

15. The CBP One parole program was promulgated by Respondents on January 18, 2023, and prospective applicants were required to undergo a "case-by-case" process in which they were "thoroughly screened and vetted, and individuals who pose[d] a national security or public safety concern [were] detained." *See* Exh. C, DHS Fact Sheet.

16. After receiving parole, the couple moved to New York, where their removal proceedings were venued. As part of the CBP One program, Jhon and Marilyn were required to attend those proceedings. Their first hearing in February 2025, which was adjourned. Marilyn Decl. at ¶4. The couple was in the process of seeking assistance on their asylum claim, and since entering the U.S. they had not missed a court date. In the meantime, he received a work permit—again pursuant to his

grant of parole. Exh. B.

17. Since arriving in the U.S., Jhon has done nothing to suggest he is danger or a flight risk. Jhon has never been arrested or been to jail before June 20, 2025. *Id.* at ¶4. In fact, he and Marilyn were set to open a chapter in their relationship with the birth of their first child on [redacted]. Riofrio Decl. at ¶5.

18. Sadly, Jhon would never get to experience this moment because on June 20, 2025, Respondents suddenly detained him as he exited his immigration court hearing. *Id.* at ¶6. During the hearing, the immigration judge initially contemplated consolidating both Jhon and Marilyn's cases (for some reason, their cases were proceeding on separate tracks). But "the government attorney interjected and said the government would dismiss Jhon's case. Jhon tried to tell the judge not to dismiss his case, but the judge said there was nothing he could do." *Id.* Jhon's hearing and arrest was captured by media outlets. *See* Exh. D, Emma Seiwell, NY Daily News, Pregnant Ecuadorian Migrant Watches Husband get Hauled Away by ICE Agents After Hearing, June 21, 2025.

19. After his arrest, Jhon was subjected to a series of transfers across various detention facilities.

20. Several times throughout Jhon's detention, his counsel reached out to ICE to request his release, particularly as his partner's due date grew closer. Each time, those requests were either rebuffed or answered with inaccurate information—including one time when Respondents said Jhon had already been deported to Ecuador, even though he had actually been transferred to Texas. *See* Exh. D, Email from Joseph T. Pujols, Acting Assistant Field Office Director, dated July 17, 2025 at 10:07am. Petitioner renewed his release request with ICE the next day, one day after his partner, who by then was about ten days from giving birth, was in a car accident. *See* Exh. D, Email from Harold Solis to Michael Charles, Deportation Officer, dated July 18, 2025 at 7:20am. Jhon remains detained; Exh. G, Medical Record dated July 17, 2025, for Marilyn Riofrio Bermeo.

BACKGROUND

A. Legal Framework of Removal Proceedings

21. When Jhon appeared for his immigration court hearing on June 20, 2025, his case was progressing through "regular" removal proceedings under 8 U.S.C. §1229a. Sectoin 1229a says removal proceedings are the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. 1229a. Indeed, 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] Before his proceedings were abruptly dismissed, Jhon intended to apply for asylum, withholding or removal, and protection under the Convention Against Torture ("CAT").

22. Noncitizens seeking asylum are entitled to a full hearing in immigration court before an Immigration Judge, known as Section 1229a removal proceedings. 8 U.S.C. § 1229a sets out the procedures and rights afforded to noncitizens in removal proceedings. These include: "the privilege of being represented…by counsel of the [noncitizen's] choosing who is authorized to practice in such proceedings" 8 U.S.C.§ 1229a(4)(A) and "a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(4)(B).

23. Decisions made by "Immigration Judges may be appealed to the Board of Immigration Appeals." 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the Federal Court of Appeals for the judicial circuit in which the respective Section 240 proceedings terminate. *See* 8 U.S.C. § 1252.

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[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.

24. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The Refugee Act is meant to enforce the "historic policy of the United States to respond to the urgent needs of person subject to persecution in their homelands." Refugee Act of 1980, § 101(a) Pub. L. No. 96-212, 94 Stat. 102 (1980).

25. The Refugee Act established the right to apply for asylum in the U.S. and defines the standards for granting asylum. It is codified in various sections of the INA which afford a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

26. In addition to the right to apply for asylum, noncitizens have the right to apply for withholding or deferral of removal on the basis of a fear that their life or freedom would be threatened upon removal or that they would be subjected torture. *See* 8 U.S.C. § 1231(b)(3); FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.

27. Noncitizens in removal proceedings are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *See Reno v. Flores*, 507 U.S. 292, 306 (1993); *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024). Although civil immigration detention is authorized by statute, that detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. 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; probation; and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

28. As to process, 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).

B. Expedited Removal

29. The statutory rights and procedures guaranteed to noncitizens like Jhon in Section 1229a proceedings are significantly more expansive than those afforded in the expedited removal process under 8 U.S.C. § 1225.

30. Unlike regular removal proceedings, expedited removal is a process that begins – and typically ends – outside of immigration court. Expedited removal is only applied to noncitizens "who have not been admitted or paroled" and who are determined to be inadmissible under either 1182(a)(6)(C) (fraud or misrepresentation) or 1182(a)(7) (lack of valid travel document). *See* 8 U.S.C. § 1225(b)(1)(A)(i).

31. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). While section 1229a removal proceedings are formal, adversarial civil proceedings conducted before a neutral adjudicator (an Immigration Judge), in expedited removal proceedings DHS officers both initiate and adjudicate the

removal order. None of the officers involved in expedited removal are required to serve as a neutral arbiter of fact.

32. For those who fear return to their countries of origin, the expedited removal statute provides a limited additional screening, called a "credible fear interview." 8 U.S.C. § 1225(b)(1)(A)(i)-(ii). But the additional screening, to the extent it occurs, does not remotely approach the type of process and rights available to asylum seekers in Section 1229a proceedings. If a noncitizen passes a credible fear interview, they are permitted to apply for asylum through Section 1229a proceedings. *See* U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

C. Expansion of Expedited Removal

33. Congress created expedited removal nearly three decades ago. In all that time, federal immigration authorities have primarily applied its truncated procedures in limited circumstances: to noncitizens who are seeking admission at a port of entry, who have been apprehended near the border shortly after they entered the country, or who arrive by sea. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Notice Designating Aliens Subject to Expedited Removal, 67 Fed. Reg. 68924 (Nov. 13, 2002).

34. Yet, on January 21, 2025, DHS issued a Federal Register Notice, published in the Federal Register on January 24, 2025, that applies expedited removal to certain noncitizens arrested anywhere in the country who cannot show "to the satisfaction of an immigration officer" that they have been continuously present in the United States for more than two years. U.S. Dep't of Homeland Sec., Designating Aliens for Expedited Removal (Jan. 21, 2025), https://public-inspection.federalregister.gov/2025-01720.pdf ("Rule"). The effective date of the Rule was January 21, 2025.

35. On February 18, 2025, ICE sent an email directive to Enforcement and Removal officers directing them to consider for expedited removal all noncitizens previously released by Customs and

Border Protection who were found to be inadmissible under 8 USC § 1182(a)(6)(C), even those who were arriving noncitizens originally processed under 8 U.S.C. § 1225(b)(1)(A) such as Petitioner. *See* 2025.02.18 ICE Email Directive on Expedited Removal and Nondetained Docket, Immigration Policy Tracking Project (2025) available at https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents.

36. Respondents cannot lawfully subject Jhon to expedited removal. The only groups of individuals subject to expedited removal proceedings are noncitizens "arriving" in the United States and noncitizens who have "not been admitted or paroled into the United States" and cannot prove to the "satisfaction of an immigration officer" that they have been continuously physically present in the country for two years. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II); 8 C.F.R. §§ 235.3(b)(1)(ii); (b)(6). Jhon falls into neither category. At the time he was detained on June 20, 2025, he was not "arriving" in the U.S.—he was already here after Respondents paroled him into the U.S. upon his arrival. Respondents therefore violated their own regulations and guidance when to the extent they have placed Jhon in expedited removal and as a result detained him.

D. Campaign of Detentions

37. On or about May 20, 2025, Respondents began a nationwide campaign to detain people attending their immigration court hearings. Initially, this was tied to motions to dismiss removal proceedings for people present in the U.S. for under two years, predicated on Respondents' intention to place them into expedited removal proceedings instead of full removal proceedings. After such a motion was made, and irrespective of the outcome, Respondents would then detain individuals immediately after their appearance in immigration court. But the detention campaign appears to have now expanded, targeting even people for whom no motion to dismiss has been made or who are not eligible for expedited removal for detention. These detentions, too, lack any individualized basis.

38. 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 or cannot lawfully be subject to expedited removal.

39. Once detained, New Yorkers targeted by this campaign are held incommunicado for several days or in some cases even longer. Family members often not hear from them for days and the ICE locator, an online portal, often does not reflect their location or reflects a detention center at which (according to facility staff there) detainees are not actually present. Respondents will not confirm detainees' location during this time and will not facilitate legal calls or visits.

40. Public reporting and reports from detainees have indicated that hundreds of people are regularly being for prolonged periods in rooms inside Manhattan federal buildings that are intended as temporary holding areas for a much smaller number of people.

41. The conditions inside 26 Federal Plaza are inhumane. Individuals detained do not have access to beds, regular meals, or communication with loved ones or counsel. Detainees also report that they are not able to bathe or change clothes; that the temperature can be extremely hot or cold; and that medical care is not provided. Detainees are also not given access to counsel.

42. Many courts, in this jurisdiction and others, have ordered the release of individuals arrested at their immigration court hearings as part of Respondents' campaign. *See e.g., Chipantiza-Sisalema v. Francis*, No. 25-CV-05528, 2025 LX 295593, 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, 2025 WL 1707737; *Velasquez v. Kurzdorfer*, 2025 WL 1953796 (W.D.N.Y. July 16, 2025); *O-J-M v. Bostock,* No. 3:25-cv-00944-AB, 2025 LX 233419, 2025 WL 1943008 (D. Or. July 14, 2025); *Y-Z-L-H*, 2025 WL 1898025; *Pinchi v. Noem*, No. 25-cv-05632-RMI (RFL), 2025 LX 277090, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Singh v. Andrews,* No. 1:25-cv-

00801-KES-SKO (HC), 2025 LX 288043, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

E. Release on Parole and Parole Revocation for Asylum Seekers

43. For asylum seekers arriving in the U.S. who have not been admitted or paroled, and who are processed under expedited removal as set forth in 8 U.S.C. § 1225(b)(1), mandatory detention is authorized by 8 U.S.C. § 1225(b)(1)(B)(ii) and (iii)(IV).

44. DHS may release individuals subject to mandatory detention on parole "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5).

45. Federal regulations specify that DHS may only release such individuals if they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). These requirements—flight risk and danger—reflect constitutional constraints, since only individuals who pose a flight risk or danger may be civilly detained. *See Zadvydas*, 533 U.S. 690.

46. Jhon, having been released on parole pursuant to this process, was therefore deemed by Respondents to lack flight risk or dangerousness.

47. The regulations contemplate parole for specific groups of individuals meeting these criteria including those "who have serious medical conditions in which continued detention would not be appropriate" and those "whose continued detention is not in the public interest." 8 C.F.R. 212.5(d)(b)(1), (5).

48. While ICE has discretion to revoke parole, it may not do so in a manner devoid of due process. *Velasquez v. Kurzdorfer*, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (reaching this conclusion for CBP One parolee); *see also Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), (S.D.N.Y. Oct. 29, 2023) (stating that "due process, at a minimum" requires the government to afford meaningful notice and an opportunity to be heard and that the opportunity must be meaningful) (*citing to Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)). "[B]efore the Government unilaterally takes away that which is sacred, it must provide *meaningful process*." *Torres-Jurado*, 2023 WL 7130898,

at *4 (*citing to Rodriguez-Figueroa v. Barr,* 442 F. Supp. 3d 549, 564 (W.D.N.Y. 2020)) (emphasis in original).

49. It is unlawful for the government to arrest a noncitizen who has been granted parole without complying with ICE's own regulatory requirements regarding the proper process for revocation of parole. *See Velasquez v. Kurzdorfer,* , 2025 WL 1953796, at *26 (citing *Y-Z-L-H v. Bostock*, 2025 LX 277386, 2025 WL 1898025, at *13 (D. Or. July 9, 2025)). As to process, at minimum, a revocation of parole requires a case-by-case assessment in which an official with authority decides that "'the purpose for which parole was authorized' has been 'accomplish[ed]' or that 'neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen]' in the United States." *Id.* at *28 (quoting 8 C.F.R. § 212.5(e)(2)(i)); *see also Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) ("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"). Prior to revoking humanitarian parole "there must be a hearing which will give assurance that the discretion of the Attorney General shall be exercised against a background of facts fairly contested in the open." *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610, 615 (2d Cir. 1958).

F. Civil Immigration Detention

50. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas*, 533 U.S. 690; *Demore*, 538 U.S. 528.

51. To comport with due process, civil detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

52. A person's liberty cannot be infringed upon without "adequate procedural protections."

Zadvydas, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. 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; probation; and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 LX 119339, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

53. Despite these baseline requirements, Respondents now regularly re-detain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (ordering the immediate release of a petitioner redetained by ICE because she "poses a risk of flight or a danger to the community" and her sudden redetention violated her right to due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering the release of petitioner redetained after an immigration court hearing and concluding "Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.").

CAUSES OF ACTION

COUNT ONE
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

(Substantive & Procedural Due Process); U.S. Const. amend. V.

54. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

55. 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). Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

56. Respondents are obligated to comply with Constitutional requirements for procedural due process, even while exercising their discretionary authority to detain noncitizens. *See Velasco Lopez*, 978 F.3d at 848 ("Detention during removal proceedings is a constitutionally valid aspect of the deportation process . . . our concern is . . . with the 'important constitutional limitations' on that power's exercise.")

57. The government made the reasoned decision to parole Jhon while he pursued his asylum claim in the United States. They determined that he did not pose a danger or flight risk. But in June 2025, he was not accorded any process prior to his sudden re-detention by ICE. He received neither adequate notice nor an opportunity to be heard as to whether a change in custody status was warranted.

58. The Due Process Clause entitles Jhon to meaningful process assessing whether his detention is justified. His sudden arrest and summary detention—without any opportunity whatsoever for him to contest his detention in front of a neutral adjudicator after he had been living and working in the United States—provides insufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See e.g., Chipantiza-Sisalema,* 2025 WL 1927931 at *5 (ordering release of petitioner re-detained after immigration hearing, finding that her detention

"violates her Fifth Amendment right to due process because ICE detained her without notice, an opportunity to respond, or an individualized determination that she poses a flight risk or a danger to the community"); *Valdez,* 2025 WL 1707737, at *4 (ordering release of petitioner re-detained after an immigration court hearing and concluding "respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights."); *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"); *Singh,* 2025 WL 1918679 at *20 (ordering release of individual re-detained after an immigration court hearing based on finding that "the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained.").

COUNT TWO
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process); Administrative Procedure Act, 5 U.S.C. §§ 702, 706

59. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

60. The government made the decision to parole Jhon under its CBP One Parole program.

61. The government's decision to revoke Jhon's parole, which it issued for two years in December 2024, without adequate process violates the Due Process Clause of the Fifth Amendment of the Constitution. MATA VELASQUEZ, v. 2025 WL 1953796, at *12 (W.D.N.Y. July 16, 2025) (citing *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610 (2d Cir. 1958)).

COUNT THREE
Violations of the Administrative Procedure Act; 5 U.S.C. §§ 702, 706 (Parole Revocation)

62. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

63. The APA requires courts to "hold unlawful and set aside agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

64. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *Accardi*, 347 U.S. at 266, 268. The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Morton,* 415 U.S. at 235 (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

65. Before deciding to revoke someone's parole, Respondents' regulations require meaningful notice. 8 C.F.R. § 1182(e). Such notice was not afforded to Petitioner.

66. To the extent that Respondents have violated their own regulations for the revocation of humanitarian parole, their actions violated the *Accardi* doctrine.

COUNT FOUR
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process); Administrative Procedure Act, 5 U.S.C. §§ 702, 706

67. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

68. Jhon remains in removal proceedings pursuant to 8 U.S.C. § 1229(a) while his appeal of the dismissal is pending with the Board of Immigration Appeals. The government's efforts to simultaneously subject him to expedited removal under 8 U.S.C. § 1225(b)(1) prior to the culmination of the 8 U.S.C. § 1229(a) proceedings violate the Due Process Clause of the Fifth Amendment of the Constitution.

COUNT FIVE
Violation of the Immigration and Nationality Act and its Implementing Regulations; Administrative Procedure Act, 5 U.S.C. §§ 702, 706

69. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

70. Section 1229a 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." 8 U.S.C. § 1229(a)(3). Jhon's Section 1229(a) proceedings are ongoing. No determination has yet been made whether he is to be removed from the United States in those proceedings.

71. Moreover, Jhon had a statutory right to apply for asylum, which he intends to do. 8 U.S.C. 1158(a). The government's dismissal of his removal proceedings pursuant to 8 U.S.C. § 1229(a) violated the INA and implementing regulations.

COUNT SIX
Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1252(e)(2); Administrative Procedure Act, 5 U.S.C. §§ 702, 706

72. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

73. 8 U.S.C. § 1225(b)(1) covers the "[i]nspection of aliens arriving in the United States and certain other aliens who have not been admitted or *paroled*." 8 U.S.C. § 1225(b)(1) (emphasis added). Section 1225(b)(1)(A)(iii)(II) further clarifies that "[a]n alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

74. Jhon was paroled into the United States in December 2024. Because Jhon's parole was unlawfully revoked, Respondents' application of 8 U.S.C. § 1225(b)(1) to Jhon after he was paroled exceeds the government's statutory authority in violation of the Immigration and

Nationality Act and the Administrative Procedure Act.

COUNT SEVEN
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); Administrative Procedure Act 5 U.S.C. §§ 702, 706

75. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

76. Because Jhon was paroled into the United States, 8 U.S.C. § 1225(b)(1) cannot be applied to him. Respondents have not provided Jhon with an opportunity to challenge his placement into expedited removal on these grounds. The government's failure to provide Jhon with such an opportunity violates the Due Process Clause of the Fifth Amendment of the Constitution.

COUNT EIGHT
Violation of the Fourth Amendment (Unlawful Arrest); U.S. Const. amend. IV.

77. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

78. Jhon was paroled by federal immigration officials and charged with removability when he entered the United States. The government exercised its discretion under the Immigration and Nationality Act to release him while he litigated that charge in immigration court. At the time of Jhon's arrest, he had been living at liberty pursuant to that determination by federal immigration authorities.

79. The government lacked reliable information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided Jhon could pursue his claims for immigration relief at liberty. His arrest based solely on the fact that the government wanted to detain him and subject him to expedited removal proceedings, after unlawfully revoking his parole, was unreasonable and therefore violates the Fourth Amendment.

COUNT NINE
Release Pending Adjudication; 28 U.S.C. § 2241

80. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

81. Pursuant to *Mapp v. Reno*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d 221, 226 (2d Cir. 2001).

82. Jhon presents substantial claims; his unlawful confinement and never-ending transfers between detention centers—all while his partner was on the verge of giving birth—presents extraordinary circumstances; and he requests immediate release pending adjudication of the instant petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring the petitioner away from the jurisdiction of this District Court;
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 Due Process Clause of the Fifth Amendment; the Fourth Amendment; the Administrative Procedure Act; and the Immigration and Nationality Act and implementing regulations;
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody without restraints on his liberty;

6. 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

7. Grant such further relief as this Court deems just and proper.

Dated: July 30, 2025

/s/ Harold A. Solis
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Index of Documentation in Support of Petition for Writ of Habeas Corpus

EX.	TITLE OF EXHIBIT
A.	Declaration of Marilyn Riofrio Bermeo & Medical Provider Letter
B.	Copy of Parole-based Employment Authorization Card for Petitioner's Partner
C.	CBP One Fact Sheet
D.	Emails to DHS-ERO re Petitioner's Custody
E.	Emma Seiwell, NY Daily News, Pregnant Ecuadorian Migrant Watches Husband get Hauled Away by ICE Agents After Hearing, June 21, 2025
F.	ICE Detainee Locator as of June 29, 2025
G.	Medical Record for Marilyn Riofrio Bermeo, dated July 17, 2025, Related to Car Accident

CERTIFICATE OF SERVICE

I certify that on July 30, 2025, I electronically filed the attached foregoing Petition for Writ of Habeas Corpus and accompanying Exhibits with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Harold A. Solis
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