UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.U., *Petitioner-Plaintiff,* v. RAUL MALDONADO, Jr., in his official capacity as Warden of the Metropolitan Detention Center, *Respondent-Defendant.*	Case No. __:25-cv-_____ ( ) ORAL ARGUMENT REQUESTED Expedited Hearing Requested Pursuant to Habeas Statute

PETITIONER-PLAINTIFF J.U.'S EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner-Plaintiff J.U. ("J.U." or "Petitioner") is a Venezuelan national who fled Venezuela to escape persecution based on his political beliefs and sexual orientation, sought asylum in the United States, and made every effort to comply with the laws of the United States in doing so.[1] Nonetheless, while his claim for asylum was pending and on no individualized basis, DHS arrested him at a scheduled hearing in his immigration case. DHS has been and is unlawfully detaining J.U. at the Metropolitan Detention Center ("MDC") in violation of his statutory and Constitutional rights. Every day J.U. languishes there, he faces an increasing risk of severe injury or even death, because he identifies as a gay man [redacted] requires appropriate medical treatment. The Government has wrongfully withheld the necessary treatment for weeks at a time so far. This Petition seeks J.U.'s release pending a decision on his asylum claim.

2. On or about March 18, 2024, J.U. entered the United States, having fled persecution in Venezuela. In Venezuela, J.U. and his family faced severe persecution. Government-connected gangs murdered one of J.U.'s brothers; attempted to murder another brother, shooting him in the process; and forced his mother into hiding. J.U.'s mother remains in Venezuela and she avoids speaking on the phone for fear of being wiretapped. J.U. himself was threatened with murder by government-connected gangs before left. J.U. presented himself to American immigration authorities to claim asylum.

3. On or about March 19, 2024, the Department of Homeland Security ("DHS") released J.U. on his own recognizance, pursuant to Section 236(a) of the Immigration and

[1] Because this Petition references J.U.'s private medical information and identifying details that could endanger J.U. himself or his loved ones, J.U. has moved for leave to proceed under this abbreviation of his name as well as providing abbreviations for other related individuals.

Nationalization Act. Thereafter, J.U. made his way to New York, where he has resided ever since. J.U. has filed a claim for asylum and established community ties, including finding lawful employment and a romantic partner, and making a home with his partner.

4. J.U. has no criminal history in any country and no history of any violent or unlawful conduct. He has complied with the conditions of his release, provided biometric information, applied for asylum ten months ahead of his deadline, and has diligently attended every hearing on his asylum claim.

5. Despite all this, J.U. was arrested on July 1, 2025, when he appeared for a regularly scheduled hearing on his asylum claim. Approximately forty other noncitizens present at the same location were arrested at the same time. J.U. was held first at 26 Federal Plaza, for about a week, and since then at the MDC, located at 80 29th Street, Brooklyn, NY 10232, in this District. The Government has wrongfully withheld J.U.'s [redacted]edication for almost half the time he has been detained since July 1 and his medication is almost about to run out again. J.U. has asked for confirmation that his medication will be resupplied but the Government has refused to give any such confirmation.

6. J.U.'s arrest on July 1, 2025 was a violation of the Immigration and Nationalization Act ("INA"), which permits DHS to detain noncitizens who are residents in the United States, but which requires an individualized determination to support any such detention. The implementing regulations require that the determination be guided by whether the noncitizen is a flight risk and whether the noncitizen is a danger to the community. DHS made no such determination, nor could it possibly have concluded that J.U. is a flight risk or any danger to the community, as no facts would support that conclusion.

7. J.U.'s arrest also violated his Due Process rights under the Fifth Amendment to the Constitution. Freedom from imprisonment lies at the heart of the Fifth Amendment's due process protections. The Government violated those protections when it arbitrarily arrested J.U. without any prior notice or hearing or individualized determination as to whether J.U. constitutes a flight risk or danger (he emphatically does not). The Government continues to violate those Constitutional protections while it holds J.U. for months or years pending a final decision on his asylum claim.

8. J.U. has satisfied or should be excused from administrative exhaustion. Administrative exhaustion is a prudential requirement, not a statutory or constitutional bar, and in any event, J.U. has already moved for issuance of a bond in immigration court twice and been wrongfully denied. In less than a sentence, the New York-Varick Immigration Court adopted DHS's position that J.U. is subject to mandatory detention under the INA, which is provably false. On the second bond hearing, the immigration court considered itself bound by that earlier incorrect ruling.

9. This petition does not present the question whether J.U.'s asylum claim should be granted. Rather, this petition argues that J.U. should not be ***detained*** at the MDC while a decision in his asylum case remains pending. He is not a flight risk and he is not a danger to the community. J.U.'s ongoing detention pending decision in his asylum case violates the INA and the Fifth Amendment.

10. Given the seriousness of the constitutional violations and the absence of any genuine administrative remedy, J.U. applies to this Court for a writ of habeas corpus.

JURISDICTION & VENUE

11. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *Lopez*

Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (granting habeas relief to noncitizen challenging the lawfulness and constitutionality of his detention); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (same).

12. Petitioner was detained by Respondents on July 1, 2025.

13. This Court has subject matter jurisdiction over this Petition pursuant to Article I, § 9, cl. 2 of the United States Constitution (habeas corpus); 28 U.S.C. § 2241 *et seq.* (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1651 (All Writs Act).

14. The Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has authority under at least the Constitution, Article I, § 9, cl. 2 and the All Writs Act, 28 U.S.C. § 1651 to issue and enforce the writ of habeas corpus.

15. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

16. Venue is proper in this District under 28 U.S.C. § 2241(d) ("the application [for habeas corpus] may be filed in the district court for the district wherein such person is in custody"); 28 U.S.C. § 1391(b) (venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"); and 28 U.S.C. § 1391(e)(1) (venue is proper in the district in which "a substantial part of the events or omissions giving rise to the claim occurred"). Venue is proper in this District because J.U. is presently detained within this District and because a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this District.

17. Under 28 U.S.C. § 2243, a court hearing a petition for a writ of habeas corpus must issue the writ or an order to show cause to the Respondent "forthwith." 28 U.S.C. § 2243.

If an order to show cause is issued, the Court must require the Respondent to respond "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

18. J.U. (defined above as "Petitioner") is a Venezuelan national who was detained by ICE at his immigration hearing on July 1, 2025.

19. J.U. has a pending application for asylum because he reasonably fears being persecuted by armed civilian groups in Venezuela ("[redacted]") who are supported by the government or by Venezuelan state actors themselves. Ex. 2 (Form I-589); Ex. 3 (Patricia Torres and Nicholas Casey, *"Armed Civilian Bands in Venezuela Prop Up Unpopular President,"* THE NEW YORK TIMES (April 22, 2017), https://www.nytimes.com/2017/04/22/world/americas/armed-civilian-bands-in-venezuela-prop-up-unpopular-president.html); Ex. 4 (Josep Freixes, "[redacted]*': Maduro's Paramilitary Groups Sowing Terror in Venezuela,"* COLOMBIA ONE (May 31, 2025), [redacted]s/); Ex. 5 (letter from J.U.'s mother recounting the family-specific threats from the [redacted]s). A member of the [redacted] previously threatened to kill J.U., at least in part for his sexual orientation. The [redacted] previously succeeded in murdering Petitioner's brother in Venezuela. Ex. 2 at 4 ("Sibling," "Deceased"); Ex. 5 (letter from J.U.'s mother describing her son's murder). They shot and attempted to murder another brother. Ex. 14 ¶¶ 2, 6. J.U. and his family have been unable to seek protection from the government through the police, since the [redacted] are supported by the government. Ex. 5; *see also* Exs. 3, 4 (public news reports describing the symbiotic relationship between the [redacted] and the Venezuelan government). J.U. fled Venezuela, eventually arriving in America, where he timely applied for asylum and humanitarian protection. Ex. 2 (Form I-589).

20. J.U. is presently held at the MDC in Kings County, New York, in this District.

21. Respondent Raul Maldonado, Jr. is the Warden of the MDC, a federal incarceration facility located within this District. Mr. Maldonado is sued in his official capacity. Under 28 U.S.C. § 2443, "The writ, or order to show cause[,] shall be directed to the person having custody of the person detained."

FACTS AND PROCEDURAL BACKGROUND

A. J.U. Was Persecuted in Venezuela

22. J.U. is a citizen of Venezuela. He fled Venezuela in May 2023 in order to escape persecution based on his political beliefs and his sexual orientation.

23. J.U. has lived as a gay man in Venezuela since at least 2008. Despite his early attempts to hide his sexual identity to avoid harassment, his community became aware of his sexuality due to his romantic relationship with a man. *See* Ex. 6 (graduation photos from 2008 showing J.U. with his then-boyfriend at J.U.'s graduation); *see also* Ex. 2 ("I don't want to return to my country because if I return I will be considered a traitor to my country and they will harass me for my sexual orientation, beat me or worse."). Persecution of LGBT persons in Venezuela is commonplace, including persecution by state-backed paramilitary groups and police. Ex. 7 (Ana Vanessa Herrero, *"Raid, arrests at Venezuelan gay club provoke fears of new persecution,"* THE WASHINGTON POST (Sept. 4, 2023), https://www.washingtonpost.com/world/2023/09/04/lgbt-persecution-venezuela-maduro/ (Washington Post article describing mass arrest at a gay bar and increase in violence against gay men in Venezuela)); Ex. 8 (Chloé Lauvergnier, *"Arrests highlight the growing 'criminalisation' of LGBT+ people in Venezuela*, THE OBSERVERS FRANCE 24 (Aug. 4, 2023), https://observers.france24.com/en/americas/20230804-arrests-highlight-the-growing-

criminalisation-of-lgbt-people-in-venezuela (Venezuelan LGBT organizations describe a "growing trend" of violence and "institutionalised homophobia" in Venezuela).

24. J.U. and his family were known by the local [redacted] in Caracas to be a part of the political opposition, including because they did not sign up for party membership. J.U. has also publicly posted criticism of the government on social media. Ex. 9 (J.U. Facebook post writing, in Spanish, that the "origins of usurpation and tyranny" lie in allowing "one citizen to retain power for an extended period"); Ex. 10 (J.U. Instagram post, writing, in Spanish: "Maduro has to go now!!"); Ex. 11 (collecting anti-Maduro Instagram posts by J.U.).

25. Around 2008, a local member of the [redacted], whom J.U. knew, dressed in all black, approached J.U. from behind at a public bus stop and put a gun to the side of his head. The member stated that he had caught J.U. and that he was going to die right there. He called J.U. homophobic slurs throughout this interaction and mocked him. Bystanders intervened and when the [redacted] member realized that he was outnumbered, he left instead of shooting and killing J.U. Following this incident, the family fled to Ciudad Miranda, a nearby city, in 2012.

26. While J.U. was living in Ciudad Miranda, his younger brother, "J.L.U.," opened an automobile repair shop. The [redacted] insisted that J.L.U. pay extortion money to them after he opened his business. Ex. 5 ("they began extorting him").

27. J.L.U. refused to pay the extortion demands. On or about September 19, 2015, several heavily-armed members of the [redacted] approached J.L.U. on a public street. They shot him multiple times in the head and chest and killed him. Ex. 5 ("my son was killed"); Ex. 12 (newspaper article about J.L.U.'s murder); Ex. 13 (death certificate for J.L.U., noting in translation the typographical error "alma de fuego" (soul of fire) corrected to "arma de fuego"

(gunfire)). J.U. later learned from witnesses to the shooting that one of the men who had killed J.L.U. was the man who had put the gun to his (J.U.'s) head in Caracas.

28. The [redacted] continued threatening the entire family, including J.U. Again, the family could not obtain any protection from the police because the [redacted] are supported by the Venezuelan state. Exs. 3, 4, 5. Instead, J.U. and his family fled again. They lost their home, their cars, and work supplies. Ex. 5.

29. J.U.'s mother and J.L.U.'s two surviving children fled to another town in Venezuela, Barquisimeto. Ex. 5. Because the [redacted] have a nationwide presence in Venezuela, J.U.'s mother rarely leaves her house in Barquisimeto and rarely speaks on the phone for fear of being wiretapped. Ex. 14 ¶¶ 5, 11 (referring to the "[redacted]," one subset of the [redacted]).

30. One of J.U's other brothers, J.D.U. worked in Caracas, the Venezuelan capital. Ex. 14 ¶¶ 2, 8. [redacted] when he also refused to cooperate with the [redacted], they also shot him (although J.D.U. survived this shooting, unlike J.L.U.). Ex. 14 ¶¶ 2, 6 (after J.D.U. "refused to join the [redacted]" he "was shot and needed surgery for his hand"). J.D.U. has also fled Venezuela to the United States.

I. J.U. FLEES TO AMERICA AND DHS RELEASES HIM FROM CUSTODY UNDER INA § 236

31. In May 2023, J.U. fled Venezuela to Colombia and then to the United States to seek safety where his brother J.D.U. was living.

32. On or about March 18, 2024, J.U. entered the United States through El Paso, Texas. Ex. 1 (DHS Notice to Appear). J.U. presented himself to border patrol agents and was detained. Ex. 1 (notice to appear documenting initial detention).

33. DHS took J.U. into custody under Section 236 of the Immigration and Naturalization Act ("INA"), *i.e.* 8 U.S.C. § 1226. On or about March 19, 2024, DHS released J.U. upon his own recognizance. Ex. 15 ("Notice of Custody Determination" and "Order of Release on Recognizance"). The Order of Release on Recognizance specifically informed J.U. that he was being released on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act[.]" Ex. 15 at 3; *see also id.* at 2 ("Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Released: On your own recognizance").

34. DHS gave J.U. a notice to appear for asylum proceedings in New York and explicitly notified J.U. that (1) he was not being deemed an "arriving alien" and (2) he was not being placed on parole. Ex. 1 at 2 (checking the box for "You are an alien ***present in*** the United States who has ***not*** been admitted or paroled.") (emphasis added).

35. On or about March 19, 2024, DHS directed J.U. to proceed to New York.

36. J.U. proceeded to New York and arrived in New York not long after March 19, 2024. Within approximately one week, J.U. checked in with an ICE officer in New York.

II. J.U. BUILDS A LIFE IN NEW YORK

37. Approximately one week after March 19, 2024, J.U. arrived in New York, where his brother J.D.U. was already living.

38. On May 16, 2024, J.U. filed an initial asylum application, ten months ahead of the one-year deadline. Ex. 2 (asylum application); 8 U.S.C. § 1158(a)(2)(B) (one year deadline). J.U. has complied with all procedures for his asylum application and all conditions of his release, including notifying the court when he changed his address, providing his biometric information,

getting DHS work authorization before gaining employment, and appearing for all scheduled hearings. Ex. 4.

39. After arriving in New York, J.U. was diagnosed [redacted] J.U. was prescribed [redacted] a medication which, when taken consistently, [redacted] so that the patient can lead a normal life [redacted] which can complicate treatment for the rest of the patient's life.

40. Also after arriving in New York, J.U. met a man, E.T., who has become his romantic partner. J.U. moved in with E.T. and they share a home together.

41. While residing in New York, DHS granted J.U.'s application for employment authorization. J.U. found a job at a business called Flying Food Group, which prepares meals for airplane flights. Exs. 17 (DHS work authorization), 18 (Flying Food Group ID card). J.U. has made friends in New York, who universally refer to J.U. as kind, honest, and hardworking. Ex. 19.

42. J.U. financially supports his mother and his orphaned nephews in Venezuela. Ex. 19.

43. J.U. has no criminal record in any jurisdiction. DHS admitted this on July 1, 2025. Ex. 20 at 2 ("Subject has no criminal history").

III. ICE IMPROPERLY ARRESTS AND DETAINS J.U.

44. Despite J.U.'s well-integrated life in New York, ICE arrested J.U. on July 1, 2025. J.U. was attending a scheduled proceeding in his immigration case at 26 Federal Plaza in New

York, New York when ICE agents indiscriminately arrested J.U. and approximately 40 other persons.

45. There was no change in circumstances between March 2024, when ICE made the decision to release J.U. on his own recognizance, and July 2025, when ICE arrested J.U., sufficient to justify J.U.'s arrest.

46. DHS made no individualized determination about J.U. before arresting him on or about July 1, 2025. Indeed, no one at DHS has ever articulated any individualized reason that J.U. has been arrested or detained.

47. Rather, around the same time and has been widely reported, DHS "revisited its legal position on detention and release authorities[.]" Ex. 21 (leaked image of DHS policy memo). Todd Lyons, Acting Director of Immigration and Customs Enforcement ("ICE"), issued a policy document to all ICE employees announcing that ICE had concluded that "section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable detention authority for all applicants for admission." Ex. 21 (leaked image of the memo discussed in the following two citations); *see also* Ex. 22, Maria Sachetti and Carol D. Leonnig, *ICE says millions of undocumented immigrants ineligible for bond hearings*, THE WASHINGTON POST (July 15, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/ (ICE director issued memorandum changing bond hearing policy "based on a section of immigration law that says unauthorized immigrants 'shall be detained' after their arrest, but that has historically applied to those who recently crossed the border and not longtime residents"); Ted Hesson and Kristina Cooke, *US launches new bid to keep migrants detained by denying hearings, memo shows*, REUTERS (July 15, 2025), https://www.reuters.com/world/us/us-launches-new-bid-keep-migrants-detained-by-denying-

hearings-memo-shows-2025-07-15/ (reporting on the memo). As a result, "it is the position of DHS that such aliens are subject to detention . . . and may not be released from ICE custody except by INA § 212 (d)(5) parole . . . These aliens are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge." Ex. 21.

48. As discussed in greater detail *infra*, ¶¶ 65–69, Section 235 of the INA mandates detention for certain noncitizens who are arrested at the border. Section 236 of the INA permits DHS to detain noncitizens who are resident in America, but the regulations implementing the INA and the Due Process Clause of the Fifth Amendment both require DHS to make an individualized determination of flight risk and danger before detaining a noncitizen pursuant to Section 236.

49. Detaining J.U. pursuant to Section 235 is effectively an admission that DHS carried out *no* individualized determination and thereby violated both the INA and the Due Process Clause.

50. J.U.'s arrest was a complete and arbitrary denial of due process. J.U. was deprived of his personal liberty and his freedom from imprisonment without adequate procedure or due process.

51. DHS, through ICE, initially detained J.U. at or near 26 Federal Plaza. The room was so crowded that many of the dozens of arrestees needed to sleep on the floor or in the bathroom. *Id.* ¶ 10. ICE recorded that J.U. was HIV positive when they arrested him (Ex. 20 at 2) but they nonetheless deprived J.U. of access to his HIV medications for the duration of his detention at or near 26 Federal Plaza. J.U. was held at or near 26 Federal Plaza for approximately one week. ICE's deprivation of J.U.'s access to his HIV medications unjustly subjected J.U. to the risk of severe illness due to his compromised immune system and the risk of developing

Biktarvy-resistant HIV. J.U. was detained in these improper and inhumane conditions for approximately seven days.

52. On or about July 8, 2025, J.U. was transferred from a building at or near 26 Federal Plaza, in New York County, to the Metropolitan Detention Center (defined above as "MDC"), in Kings County, New York. J.U. has been held at the MDC since that time and is held there now.

53. There is a well-founded and well-publicized history of unhealthy and dangerous conditions at the MDC. *See, e.g.*, Robert Abruzzese, *Brooklyn federal judge criticizes MDC for ignoring court order in inmate's medical case*, BROOKLYN DAILY EAGLE (Dec. 22, 2023), https://brooklyneagle.com/articles/2023/12/22/brooklyn-judge-criticizes-mdc-for-ignoring-court-order/ (noting that an inmate with MRSA was released back in to general population while still infectious); Benjamin Weiser, *"Judge Refuses to Send Defendant in Drug Case to Troubled Brooklyn Jail,"* THE NEW YORK TIMES (Jan. 4, 2024), https://www.nytimes.com/2024/01/04/nyregion/brooklyn-judge-mdc-jail.html (Judge Furman, SDNY, quoted as saying it has become "routine" for judges in the Eastern and Southern Districts of New York "to give reduced sentences to defendants based on the conditions [at] the MDC" and citing an instance in which one inmate broke another inmate's jaw and the MDC refused to transport the injured inmate for treatment); Emma Rindlisbacher, *"An Extreme Amount of Pain": How a Notorious Jail Failed a Disabled Transgender Inmate,"* MOTHER JONES (Jan. 18, 2023), https://www.motherjones.com/criminal-justice/2023/01/mdc-brooklyn-jail-health-care/ (noting that "one prisoner previously was left for two weeks with an untreated gunshot wound and others were denied access to medical equipment," as well as describing how delaying replacement of a catheter resulting in an emergency hospitalization due to infection); Annie Correal and Joseph

Goldstein, "*'It's Cold As Hell': Inside a Brooklyn Jail's Weeklong Collapse*," THE NEW YORK TIMES (Feb. 9, 2019), https://www.nytimes.com/2019/02/09/nyregion/brooklyn-jail-no-heat-inmates.html (for one week in 2019, the MDC was without heat, hot water, or power during a polar vortex).

54. J.U. has a well-founded fear that his detention at MDC creates risks for his health. Besides the generally unsanitary conditions, J.U. was deprived of his [redacted] medication again at MDC. When J.U. arrived at MDC, the detention officials provided J.U. with only one day's worth of [redacted] medication. They did not provide him with any further supply until weeks later. J.U. has been deprived of his [redacted] medication for approximately three cumulative weeks since he was detained on July 1. J.U.'s immune system is compromised [redacted] and depriving him of his [redacted] medication is seriously dangerous to J.U.'s health. This necessitates a swift legal remedy.

55. J.U. has suffered further injuries to his physical health at MDC. While at MDC, his gums began bleeding. J.U. was taken to a detention or medical official who confirmed his gums were bleeding but who offered no diagnosis and no treatment.

56. As of August 29, 2025, J.U. has only two days' worth of [redacted] medication remaining and is reasonably fearful, based on recent experience, that his [redacted] treatment will be interrupted yet again.

57. If this Court issues a writ for habeas corpus, J.U.'s partner, E.T., has confirmed he will house and support J.U.

IV. J.U. MOVES FOR RELEASE ON BOND BUT HIS MOTION IS WRONGFULLY DENIED

58. After he was detained, J.U.'s friends and family found an attorney to file a bond motion for him in immigration court.

59. On July 5, 2025, attorney Charles Mackenzie filed an appearance in immigration court strictly for the purpose of filing and arguing a bond motion.

60. On or about July 11, 2025, Mr. Mackenzie filed a motion for bond in immigration court under Section 236 of the INA. The motion argued that J.U. was not a flight risk and not a danger to the community. The motion argued that J.U. has no criminal record in either the United States or Venezuela, has never been involved in any unlawful or violent conduct, seeks protection under U.S. law and has consistently shown respect for U.S. legal procedures, and has attended all immigration proceedings and established stable ties in New York.

61. On July 31, 2025, Judge Francisco Prieto of the Executive Office for Immigration Review ("New York-Varick Immigration Court") entered an order denying the motion for bond. The written rationale for the decision was, in full: "Denied, because Mandatory detention[.]" Ex. 23.

62. On August 4, 2025, Mr. Mackenzie withdrew from his representation.

63. On or about August 16, 2025, J.U. retained Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") as *pro bono* counsel. Quinn Emanuel filed a renewed motion for bond but on August 27, 2025, Judge Charles Conroy of the New York-Varick Immigration Court held that he was bound by the earlier bond ruling as law of the case and denied the second bond motion.

64. On August 27, 2025, J.U. noticed an appeal of the July 31, 2025 ruling denying his motion for release on bond, however it is standard for such an appeal to take at least six months. "According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025).

V. J.U.'S DETENTION IS UNLAWFUL UNDER THE INA

65. As explained in more detail below, the INA provides two relevant methods for detaining noncitizens: 8 U.S.C. §§ 1225 and 1226. Section 1225 imposes mandatory detention on noncitizens who are "seeking admission" to the United States. Section 1226 permits discretionary detention of noncitizens who are "already in the country." Exercising that discretion under Section 1226 ***requires*** the Government to make an individualized determination of whether the noncitizen is a flight risk or a danger to the community before detaining the noncitizen. Section 1225 does not apply to J.U. and there was no individualized determination applicable to J.U., as is required under Section 1226, therefore his detention was unlawful under the INA.

66. The Immigration and Naturalization Act ("INA") provides two relevant methods for detaining noncitizens: 8 U.S.C. §§ 1225 and 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288-289 (2018) (Section 1225 governs "whether an alien seeking to enter the country is admissible" but Section 1226 governs aliens "once inside the United States"); *Gomes*, at *2 ("Two statutes principally govern the detention of noncitizens pending removal proceedings: 8 U.S.C. §§ 1225 and 1226.").

67. INA § 235(b), codified at 8 U.S.C. § 1225(b), ("Section 1225" or "Section 235") requires mandatory detention of certain noncitizens who are "seeking admission" to this country. 8 U.S.C. § 1225(b)(2)(A) ("if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained") (emphasis added). The only exception to detention under this section is parole under Section 212(d)(5)(A) of the INA for humanitarian reasons or public benefit. 8 USC § 1182(d)(5)(A) (allowing parole "on a case-by-case basis for urgent humanitarian reasons or significant public

benefit" to any "alien applying for admission to the United States"). Section 1225 applies to "an alien *seeking to enter the country*[.]" *Jennings*, 583 U.S. at 289 (emphasis added).

68. By contrast, INA § 236(a), codified at 8 U.S.C. § 1226(a), ("Section 1226" or "Section 236") provides discretionary authority to the Government to detain noncitizens who are "already in the country[.]" 8 U.S.C. § 1226(a) ("an alien *may* be arrested and detained pending a decision on whether the alien is to be removed") (emphasis added); *Jennings*, 583 U.S. at 289 (Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings") (emphasis added). Detention under Section 1225 is "essentially mandatory" whereas detention under Section 1226 is "largely discretionary." *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025).

69. As shown below, J.U. was and must have been detained pursuant to DHS's discretionary authority under Section 1226 (*i.e.* Section 236). His detention under this provision was unlawful because Section 1226 requires an individualized custody determination but there was no such individualized custody determination here.

A. J.U. Was Detained Pursuant to Section 1226

70. The Court should find that J.U. was detained pursuant to Section 1226 for at least three independent reasons. ***First***, DHS has already admitted that J.U. is subject to detention, if at all, under Section 1226. ***Second***, if J.U. were subject to detention under Section 1225, then DHS would have been obliged to detain him or parole him when he presented himself to immigration authorities in 2024; but they did not do so, thereby admitting that he was subject to detention under Section 1226, if at all. ***Third***, Section 1225 cannot apply to someone who, like J.U., is an alien "present in" the United States.

1. DHS Has Admitted Section 1226 Applies

71. DHS has explicitly admitted that J.U. is subject to detention on a discretionary basis under Section 1226, *i.e.*, Section 236 of the INA. When J.U. entered this country and presented himself to immigration authorities, DHS issued him a "Notice of Custody Determination." Ex. 15. The Notice of Custody Determination was directed to J.U. and signed by an authorized officer of DHS. *Id.* The notice informed J.U. that he was being released "on your own recognizance" and "[i]n accordance with ***section 236*** of the Immigration and National Act[.]" *Id.* at 3 ("Order of Release on Recognizance") (emphasis added); *see also id.* at 2 ("Pursuant to the authority contained in ***section 236*** of the Immigration and Nationality Act part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Released: On your own recognizance.") (emphasis added).

72. DHS's straightforward admission should be dispositive.

2. By Releasing J.U. On His Own Recognizance, DHS Admitted He Was Not Liable To Detention Under Section 1225

73. By releasing J.U. to travel to New York, DHS also admitted that J.U. was not liable for detention under Section 1225. Unlike Section 1226, Section 1225 requires mandatory detention. 8 U.S.C. 1225(b)(2)(A) ("in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained.") (emphasis added). A noncitizen detained under Section 1225 "may be released *only* if he is paroled 'for urgent humanitarian reasons or significant public benefit' pursuant to 8 U.S.C. § 1182(d)(5)(A)." *Lopez Benitez*, at *3 (citing *Jennings*, 583 U.S. at 300); *Jennings*, 583 U.S. at 300 ("That express exception to detention [*i.e.* for humanitarian reasons or significant public benefit] implies that

there are no *other* circumstances under which aliens detained under § 1225(b) may be released.") (emphasis in original). "Other than this limited exception (which is not implicated here), detention under 1225(b)(2) is considered mandatory." *Lopez Benitez*, at *3. Persons detained pursuant to Section 1225 "are not entitled to a bond hearing." *Id.* (citing *Jennings*, 583 U.S. at 297).

74. DHS has admitted that J.U. was not released on parole. J.U.'s original "Notice to Appear" states clearly: "You are an alien present in the United States who has ***not*** been admitted ***or paroled.***" Ex. 1 at 2 (emphasis added). J.U. was released on his own recognizance. Ex. 15 at 2 ("I have determined that, pending a final administrative determination in your case, you will be: Released: On your own recognizance"). There is no option to release a detainee on his own recognizance under Section 1225. Such a release is not a "humanitarian" release nor secures any "public benefit" to the United States, as would be required under §§ 1225 and 1182(d)(5)(A). Releasing a detainee on his own recognizance is a form of conditional release authorized under Section 1226 and ***not*** under Section 1225. *See Martinez*, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (release on the petitioner's own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (a noncitizen released on his or her own recognizance must have been detained and released under Section 1226). J.U. must, therefore, have been detained and released under Section 1226, ***not*** Section 1225.

3. DHS Has Admitted J.U. Is An "Alien Present In The United States" And Therefore Liable To Detention, If At All, Under Section 1226

75. In addition, DHS has also admitted that J.U. was "an alien present in the United States." Ex. 1 at 2 (checking the box for "You are an alien present in the United States" and ***not***

checking the box for "You are an arriving alien."). Section 1226 governs detention of aliens "already in the country," *Jennings*, 583 U.S. at 289 (citing §§ 1226(a) and (c)); *id.* at 288 (Section 1226 "generally governs the process" for detaining noncitizens "once inside the United States"). *See also Lopez Benitez*, at *4 (if the petitioner was "already in the country" when DHS detained him then "his detention is discretionary" and made under Section 1226 (citing *Jennings*, 583 U.S. at 288-289)). DHS has therefore admitted that J.U. is subject to detention under Section 1226, not Section 1225.

B. J.U.'s Detention Under Section 1226 Was Unlawful

76. As shown above, J.U. was detained under Section 1226 and is liable to re-detention, if at all, under Section 1226.

77. Section 1226 permits discretionary detention of noncitizens but "§ 1226(a) and its implementing regulations ***require*** ICE officials to make an individualized custody determination." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (emphasis added); *see Lopez Benitez*, at *10 ("[B]efore the Government may exercise discretion to detain a person, § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination" (citing *Velesaca*)). *See also Velesaca*, 458 F. Supp. at 235 (the "may" in immigration statutes generally requires "some level of individualized determination" and does specifically impose such a requirement in § 1226(a)) (citing *I.N.S. v. Nat'l Ctr. For Immigrants' Rights Inc.*, 502 U.S. 183, 194 (1991)).

78. The regulations implementing § 1226(a) require the DHS officer to make that individualized determination based on two factors: whether the noncitizen is likely to attend future immigration proceedings; and whether the noncitizen is a "danger to property or persons." *Lopez Benitez*, at *10 (DHS officer acting under Section 1226 "must make an individualized determination" about detention "based on two factors—whether the noncitizen is a 'danger to

property or persons' and is 'likely to appear for any future proceeding." (citing 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. 236.1(c)(8))). If DHS does detain the noncitizen then the noncitizen may challenge that individualized determination before an immigration judge, who must consider the same factors. *Lopez Benitez*, at *10 (citing C.F.R. §§ 1003.19(d), (e) (providing for review of custody and bond determinations by an immigration judge)). *See also Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (B.I.A. 2018) ("An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.") (citing *Matter of Fatahi*, 26 I. & N. Dec. 791, 793-94 (B.I.A. 2016)); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1112-13 (B.I.A. 1999), *modified on other grounds*, *Matter of Garcia Arreola*, 25 I. & N. Dec. 267 (B.I.A. 2010)).

79. This individualized determination is an intrinsic part of the discretionary structure of Section 1226. If all noncitizens could be detained under Section 1226 "on a categorical (or arbitrary) basis without any kind of individualized assessment, it would make little sense to permit such individuals an opportunity to challenge their detention by an appeal before an immigration judge on the basis of specific factors such as dangerousness or flight risk." *Lopez Benitez*, at *10. This is reinforced by Section 1226(c), which *requires* the Government to detain certain criminal noncitizens who are liable to detention, if at all, under Section 1226. *See* 8 USC § 1226(c) (notwithstanding the discretionary structure of Section 1226, the Attorney General "shall" detain any noncitizen who has committed certain offenses, including assault of a law enforcement officer or any crime resulting in death or serious bodily injury). There would be no

need for such a carveout in Section 1226 if *all* noncitizens liable to detention under Section 1226 were subject to mandatory detention already.

80. Here, there was no individualized determination. On the contrary, the available record from J.U.'s July bond hearing shows that DHS wrongly asserted that J.U. was subject to mandatory detention. J.U. is not subject to mandatory detention because—as DHS has ***admitted***—J.U. is "an alien present in the United States" (Ex. 1 at 2), was ***not*** released on parole (*id.*), and was expressly released "on your own recognizance" under "section 236 of the Immigration and Nationality Act" (Ex. 15 at 3). Any decision to ***reverse*** that exercise of discretion and detain J.U. while he is "already in the country," *Jennings*, 583 U.S. at 288, Ex. 1 at 2 (J.U. is "present in the United States" and ***not*** an "arriving alien"), ***must*** be based on an individualized consideration of whether J.U. is a flight risk or a danger to the community, *Velesaca*, 458 F. Supp. 3d at 241 (INA and its regulations "***require*** ICE officials to make an individualized custody determination") (emphasis added). But J.U. has no criminal record in any country, has never engaged in any unlawful or violent conduct, has complied with all conditions of his release, and has consistently appeared at all his immigration hearings, including the July 1, 2025 hearing at which he was arrested. Therefore, even if the Government *had* carried out any kind of individualized evaluation of the detention factors—which, on information and belief, the Government did not do—that individualized evaluation could not possibly have concluded that J.U. merited detention.

81. The Court can conclude there was no individualized determination because J.U. was arrested with approximately forty other persons at the same time in the same location and because ICE has apparently adopted a revised legal policy of arguing that all noncitizens are subject to mandatory detention under Section 1225. *See* Ex. 21 (leaked image of new DHS

policy), Ex. 22 (Washington Post article discussing the leaked policy); *see also supra* ¶ 47. This lack of individualized determination is reflected in the record from J.U.'s first bond hearing when the immigration court reasoned, in full: "Denied, because Mandatory detention[.]" Ex. 23.

82. J.U.'s detention was unlawful under the INA because it was not supported by any individualized determination as to whether he constituted a flight risk or a danger to property or persons. A writ of habeas corpus should therefore issue to release him from his unlawful imprisonment. *See Lopez Benitez*, at *15 (granting release to petitioner unlawfully detained under the INA without any individualized custody determination); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (same).

VI. J.U.'S DETENTION VIOLATES THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE

83. J.U.'s detention violated the Fifth Amendment's Due Process Clause.

84. The Fifth Amendment's Due Process Clause prohibits the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

85. The Due Process Clause protects all persons within the United States, regardless of citizenship status. *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent."). Noncitizens have a liberty interest in continued freedom from civil immigration confinement. *See Lopez v. Sessions*, 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.").

86. The Government may detain noncitizens who are charged with removability under the Immigration and Naturalization Act ("INA") but the Due Process Clause imposes constitutional guard rails on the exercise of that power. *See Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) ("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."); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) ("The Government's discretionary authority to detain individuals for immigration purposes does ***not*** free it from the constraints of the Constitution.") (emphasis added).

87. The Second Circuit has held that the *Mathews v. Eldridge* balancing test applies when determining the adequacy of the process afforded noncitizens in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of that private interest by the procedures or process used; (3) the Government's interest, including the fiscal and administrative burden that additional or substitute procedures would require. *Mathews*, 424 U.S. at 335.

88. J.U. more than satisfies the *Mathews* test to show that his imprisonment violates the Fifth Amendment's Due Process protections against wrongful imprisonment.

89. As to the first prong, J.U. invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). J.U. was wrongfully arrested while appearing at an immigration proceeding on his claim for asylum. He was showing respect for the immigration

proceedings of this country at the very moment when DHS improperly arrested him and locked him up with no hearing and on the strength of no individualized determination. The first prong of the *Mathews* test is not only easily satisfied here; it is satisfied by what the Second Circuit has called, "the most significant liberty interest there is[.]" *Velasco Lopez*, 978 F.3d at 851.

90. As to the second prong, the risk of an erroneous deprivation of J.U.'s liberty interest is high. *See Lopez*, 2018 WL 2932726 at *11 (risk of erroneous deprivation of liberty of a noncitizen re-detained without any change in circumstances or any individualized determination is high). DHS has not and could not articulate any change in circumstances between March 2024 and July 2025 that would make J.U. a flight risk or show he is in any way dangerous to persons or property. J.U. is not a flight risk. DHS effectively admitted J.U. is not a flight risk when they released him on his own recognizance. *See Valdez*, at *3 (DHS contention that noncitizen habeas petitioner is a flight risk is "directly at odds" with a previous DHS decision to release the petitioner on his own recognizance). Far from being a flight risk, J.U. filed his asylum application ten months early, has appeared at all immigration proceedings, and—with DHS's authorization—has obtained lawful employment. Exs. 17, 18. And when arresting J.U. on July 1, 2025, DHS admitted that J.U. has no criminal history. Ex. 20 at 3 ("Subject has no criminal history"). The risk that J.U. has been wrongfully deprived of a valid right is not just high but a near-certainty. To the extent the Government might argue there has been a change in executive officers and Government policies, this does not constitute any change in circumstances sufficient to merit re-detention. *Valdez*, at *3 n. 6 ("The law requires a change in relevant facts, not just a change in attitude.").

91. The third prong, the Government's interest, is stated clearly by Supreme Court precedent and the implementing regulations. When the Government detains noncitizens pending

removal proceedings, it has a legitimate interest in "ensuring the appearance of aliens at future immigration proceedings" and in "preventing danger to the community." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Velasco v. Lopez*, 978 F.3d at 854 (the Government's interests in detaining noncitizens under Section 1226 are "(1) ensuring that noncitizen[s] do not abscond and (2) ensuring they do not commit crimes"); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (the Government must evaluate "dangerousness or flight risk" before detaining a noncitizen present in the United States pending removal proceedings). J.U. has no criminal history in any country and the Government cannot credibly argue that he is a danger to the community. J.U. is not a flight risk. He has voluntarily attended all his scheduled immigration court proceedings, filed his asylum application ten months early, and established ties in the New York City area, including finding a job and moving in with a romantic partner. J.U. is neither a flight risk nor dangerous. The Government's decision to detain J.U. in July 2025 without any due process is an unconstitutional abuse of its discretionary authority.

92. Given the significant liberty interest at stake, the high risk of erroneous deprivation (which has occurred and is ongoing), and the easy satisfaction of DHS's lawful interests in protecting the community and preventing flight risk, J.U. was undoubtedly entitled to more process than he received. It was a violation of J.U.'s Due Process rights under the Fifth Amendment for DHS to detain him as it did. *See Valdez*, at *4 ("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.").

VII. ADMINISTRATIVE EXHAUSTION HAS BEEN SATISFIED OR SHOULD BE EXCUSED

93. On August 20, 2025, J.U., by his counsel, filed a second motion for release on bond in his immigration case. Judge Charles Conroy of the New York-Varick Immigration Court heard that motion on August 27, 2025. Judge Conroy denied the second motion on that date because he understood himself to be bound by the July 31, 2025 determination, by Judge Francisco Prieto, on J.U.'s earlier bond motion. The earlier bond motion denied J.U.'s motion for bond in a ruling whose reasoning was, in its entirety: "Denied, because Mandatory detention." Ex. 23.

94. On August 27, 2025, J.U. appealed the July 31, 2025 bond ruling.

95. While the appeal proceeds, J.U.'s wrongful detention will continue at least through the pendency of the appeal. A decision on that appeal will probably not come for many months more and it will not remedy the ongoing violations to J.U.'s rights under the INA and the Constitution. No decision on appeal can restore to J.U. the months he has already spent in custody under a wrongful interpretation of the INA. He has tried to use administrative methods to secure his release but after multiple tries over two months, J.U. has had no success and he is not likely to succeed, if at all, for half a year or more. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ("According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024.").

96. Moreover, administrative exhaustion is a prudential consideration and cannot and should not restrain this Court from exercising its historic power to issue and enforce a writ of habeas corpus. District courts in this Circuit "generally" require administration exhaustion before challenging immigration detention in a federal district court but only "as a prudential matter." *Lopez Benitez*, at *13 (excusing administrative exhaustion and granting petition for writ of *habeas corpus*)). Administrative exhaustion is ***not*** a statutory requirement. *Quintanilla v.*

Decker, 2021 WL 707062 at *2 (S.D.N.Y. Feb. 22, 2021) ("there is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus," although federal courts "generally" require such exhaustion "as a prudential matter"); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.").

97. Courts in this Circuit will excuse administrative exhaustion and grant habeas petitions for relief from custody when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain stances a plaintiff has raised a substantial constitutional question." *Quintanilla*, at *2 (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003, *as amended* (July 24, 2003)). A petitioner does not need to show or prevail on all factors for the Court to excuse administrative exhaustion. *Lopez Benitez*, at *13–14 (finding habeas petitioner had shown factors (1) and (4) and excusing administrative exhaustion on that basis and granting habeas relief).

98. This Court should hold that J.U. has satisfied or is excused from administrative exhaustion.

A. J.U. Has No Genuine Opportunity For Adequate Relief

99. The available remedies provide "no genuine opportunity" for adequate relief for several independent reasons.

100. ***First***, J.U. brings a constitutional claim against the Government, and immigration courts have "no authority to address Petitioner's constitutional challenge[.]" *Quintanilla*, at *2 (excusing exhaustion for noncitizen habeas petitioner challenging immigration detention and awarding habeas relief); *Lopez Benitez*, at *14 (a constitutional challenge to

immigration detention "cannot properly be adjudicated administratively") (citing *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *1, n.1 (S.D.N.Y. June 18, 2025) (constitutional question "could not be properly addressed by the Immigration Judge or Board of Immigration Appeals")). Administrative courts, for all their virtues, simply do not present a "genuine opportunity for adequate relief" on a constitutional claim for a violation of the Fifth Amendment. *Araujo-Cortes*, 35 F. Supp. 3d at 539 (excusing administrative exhaustion for a habeas petitioner raising constitutional issues because "the [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues").

101. ***Second***, a bond hearing or appeal after arrest is no substitute for the injury the Government has already done, and is doing now, to J.U.'s Fifth Amendment rights. A bond hearing in immigration court is "no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Lopez Benitez*, at *13. The harm J.U. has suffered is specifically DHS's and ICE's failure to conduct any individualized custody determination and offer any due process *before* detaining him. A later review by an immigration court or the Board of Immigration Appeals of that initial wrongful decision is no "genuine" remedy for that wrong. "The suggestion that" the Government may detain noncitizens "without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (excusing administrative exhaustion and ordering habeas relief to noncitizen). *See also Lopez Benitez*, at *13 (administrative exhaustion was excused for noncitizen habeas petitioner because a bond hearing

is "provided for the purpose of custody *re*-determination," which cannot substitute for the failure to make any *initial,* individualized determination) (emphasis in original).

102. ***Third,*** the duration of the appeal from the immigration court's decision is also a decisive factor in excusing administrative exhaustion. J.U. will be incarcerated pending his appeal of the bond motion. The Second Circuit has recognized that "[d]etention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." *Velasco Lopez*, 978 F.3d at 852. This may take "***months or years***[.]" *Id.* (emphasis added). Indeed, it is a matter of public record that "according to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Gomes*, at *5.

103. The duration of detention during these administrative proceedings is itself a reason to excuse administrative exhaustion. *Lopez Benitez*, at *13 (excusing administrative exhaustion for noncitizen habeas petitioner because detention pending immigration proceedings "does nothing to mitigate the harm to Plaintiffs in the time they are in detention awaiting review") (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("[T]he fact that Plaintiffs may seek review by an [immigration judge] of their initial bond determination does nothing to mitigate the harm to Plaintiffs *in the time they are in detention* awaiting review.") (emphasis added) (citing *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015) (although a noncitizen may seek release through immigration courts "this potential redetermination" may "occur[] weeks or months after ICE's initial denial of relief. It thus offers no adequate remedy for the period of unlawful detention . . . *before* receiving this review" or any eventual release) (emphasis in original))). The BIA appeals process is so long that the underlying immigration case is sometimes adjudicated before the bond appeal, thereby mooting the appeals process entirely.

Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (excusing exhaustion). The suggestion, therefore, that J.U. has an adequate remedy available via administrative courts "rings hollow" and the first exhaustion exception applies. *Lopez Benitez*, at *14 (citing *Chipantiza-Sisalema*, at *3).

104. Put plainly, J.U. is and has been wrongfully detained and will likely remain wrongfully detained for half a year or longer. His bond appeal might take even longer than the adjudication of his underlying claim for asylum. During that time he will be wrongly incarcerated, probably for at least half a year and possibly for much longer. He therefore has "no genuine opportunity" for adequate relief in administrative courts.

B. J.U. Has Suffered And Will Continue To Suffer Irreparable Injury

105. Irreparable injury has occurred, and will continue to occur, without judicial relief. "[A]s a general matter, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights." *Donohue v. Mangano*, 886 F. Supp. 2d 126, 150 (E.D.N.Y. 2012) (gathering cases). Where plaintiffs "allege deprivation of a constitutional right, no separate showing of irreparable harm is necessary." *Statharos v. New York City Taxi and Limousine, Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999); *see also Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("The district court properly relied on the presumption of irreparable injury that flows from a violation of constitutional rights.").

106. J.U.'s unlawful detention, in violation of his Fifth Amendment Due Process rights, is an irreparable harm. No court could retroactively order that J.U. be restored to his freedom for the months he has already been wrongfully detained. If his detention continues for more months or longer, the irreparable injury will be greater. The Second Circuit has recognized that longer periods of wrongful detention are more serious. *Velasco Lopez*, 978 F.3d at 852 ("The longer the duration of incarceration, the greater the deprivation.").

107. In addition, since J.U. was taken into custody on July 1, 2025, he has been deprived of access to his [redacted] medication for approximately three of the past eight weeks, both at 26 Federal Plaza and at MDC. This is no theoretical harm or conjectural injury: J.U. has ***already*** been deprived of medicine, ***twice***, that is necessary to his health and life. When J.U. was taken to MDC, he was given only ***one day's worth*** of [redacted] medication and almost immediately was deprived of his [redacted] medication for further weeks. Taking a patient off [redacted] risks the development of a [redacted] which would complicate the future treatment [redacted] J.U. has only two days' worth of [redacted] medication remaining as of August 29, 2025 and although he has been asking MDC for a further supply of medication, he has not received it yet and is reasonably fearful, based on recent experience, that it will not be timely forthcoming. The risk that J.U. will be deprived of his medicine again is an independent basis for this Court to find a probability of irreparable injury sufficient to excuse administrative exhaustion.

C. <u>Administrative Appeal Would Be Futile</u>

108. Administrative appeal would be futile for substantially the reasons identified above, *supra* ¶¶ 99–104. J.U. has tried to secure his release through bond motion in administrative courts twice and been denied both times. His first motion was denied wrongfully and his second motion was denied in deference to the first. J.U. is proceeding on an appeal but that will take half a year or longer and he will be detained during that time. Even if the Board of Immigration Appeals does eventually order J.U. to be released, wrongful incarceration for additional months deepens the ongoing constitutional injury.

109. The Second Circuit has recognized that "detention under § 1226(a) is frequently prolonged because it continues until all proceedings *and appeals* are concluded." *Velasco Lopez*, 978 F.3d at 852 (emphasis added). *See also Gomes*, at *5 (bond appeals typically took more than

200 days in 2024). "The longer the duration of incarceration, the greater the deprivation." *Velasco Lopez*, 978 F.3d at 852. Accordingly, "Respondents' suggestion that [Petitioner] has an adequate remedy available to him rings hollow[.]" *Lopez Benitez*, at *14 (cleaned up (citing *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025))).

D. J.U. Raises A Substantial Constitutional Question

110. Finally, J.U. raises a "substantial constitutional question." J.U. contends that his detention without any individualized assessment is a violation of his due process rights. Other district courts in this Circuit have already recognized that an immigration prisoner who has been detained without any individualized assessment of conditions and who challenges his detention as a violation of due process raises the kind of constitutional question that "cannot properly be adjudicated administratively." *Lopez Benitez*, at *14; *Chipantiza-Sisalema*, at *3 (excusing administrative exhaustion because the petition "has raised a substantial constitutional question") (citing *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *1, n.1 (S.D.N.Y. June 18, 2025) ("Here Petitioner has raised a constitutional question that could not be properly addressed by the Immigration Judge or Board of Immigration Appeals") (citing *Quintanilla*, 2021 WL 707062, at *2))). Therefore, the Court should conclude that J.U. "is excused from exhausting administrative remedies." *Lopez Benitez*, at *14.

CAUSES OF ACTION

COUNT I

J.U.'S DETENTION VIOLATES THE INA

111. J.U. repeats and realleges the foregoing allegations as though they were fully set forth herein.

112. Under the INA, Respondent may not hold J.U. without an individualized determination by the Government that J.U. is a danger to the community or a flight risk.

113. The Government made no finding that J.D. is a danger to the community or a flight risk. There is no basis for the Government to make any such finding.

114. Respondent's detention of J.U. violates the INA.

COUNT II

J.U.'S DETENTION VIOLATES THE FIFTH AMENDMENT RIGHT TO DUE PROCESS

115. J.U. repeats and realleges the foregoing allegations as though they were fully set forth herein.

116. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Due Process Clause protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

117. Petitioner's detention violates the Due Process Clause. DHS determined that Petitioner was not a danger and not a flight risk when DHS released J.U. from custody in 2024 on his own recognizance. J.U. was not accorded sufficient process prior to his arrest by ICE in July 2025. J.U. received no opportunity to be heard as to whether a change in custody status was warranted. No such process could rationally have concluded that J.U. had become a danger or a flight risk since March 2024.

118. Because J.U.'s detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention is unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner J.U. respectfully requests that this Court:

119. Exercise jurisdiction over this matter;

120. Issue a Writ of Habeas Corpus;

121. Enjoin Respondents from moving J.U. outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

122. Enjoin Respondents from moving J.U. outside the United States pending its adjudication of this petition and full and fair adjudication of his immigration case;

123. Declare that J.U.'s detention violates the INA, the regulations implementing INA, and the Due Process Clause of the Fifth Amendment;

124. Order that J.U. will be allowed a full opportunity to apply for all forms of relief for which he is eligible;

125. Release J.U. from custody of the Respondents pending disposition of the Petition;

126. Award J.U. costs and reasonable attorneys' fees; and

127. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

Dated: August 29, 2025

By: */s/ Marc L. Greenwald*

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