UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

O.F.B. *Petitioner,* v. RAUL MALDONADO, JR., in his official capacity as Warden of the Metropolitan Detention Center; 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 U.S. Immigrations 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. 25-6336 **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner O.F.B. ("Petitioner" or "Mr. B")[1]—an asylum seeker and citizen of Colombia—was unlawfully detained at immigration court by Immigration and Customs Enforcement (ICE) when he appeared for his hearing on August 21, 2025. Petitioner is medically vulnerable as he is [redacted] and he is now languishing in ICE custody at the Metropolitan Detention Center (MDC) in Brooklyn, NY away from his medical care team and his family.

2. Mr. B has done everything the government asked of him to seek asylum in the United States. He followed the process Department of Homeland Security (DHS) established for people seeking asylum to present themselves at the border. He appeared at the border on that date, at which point DHS decided to release him into the United States while he applied for asylum. He,

[1] Petitioner has filed a Motion For Leave To Proceed Under Pseudonym concurrently with the instant Petition.

therefore, lawfully entered the United States where he reunited with family. He applied for and was granted permission to work, submitted his application for relief in immigration court, and, when he moved to a different city, updated his address. Critically, he also appeared for his immigration hearing. However, when he attended immigration court on August 21, 2025 for this routine hearing, he was unlawfully arrested by ICE and detained at MDC.

3. Mr. B's arrest and detention were wholly unjustified and were not based on any consideration of Mr. B's individualized circumstances. In the time he has lived in the United States, Mr. B has done all he can to integrate into his community, begin to learn English, and work. He is not a flight risk—as evidenced by his dutiful appearance at his scheduled immigration court date, where he was arrested—nor a danger to the community, as he has no criminal history apart from a traffic violation. Rather, Mr. B was arrested and detained along with countless others in the summer of 2025, as part of a nationwide campaign to summarily arrest noncitizens like Mr. B when they attend their immigration court hearings.

4. Mr. B's arrest and ongoing detention are causing him immense harm. Prior to his August 21, 2025 arrest, Mr. B had never been in jail. Since arriving at MDC—a facility primarily detaining people facing federal criminal charges and that is "notorious for dangerous and inhumane conditions that have resulted in multiple inmate deaths, including medical neglect"[2]—

[2] Andrew Gounades, *Electeds, Advocates Call for End to ICE Detention at Inhumane Federal Jail*, THE NEW YORK STATE SENATE (July 14, 2025), https://www.nysenate.gov/newsroom/press-releases/2025/andrew-gounardes/electeds-advocates-call-end-ice-detention-inhumane; John Annese, *MDC Brooklyn federal jail has just two doctors on staff, hearing reveals*, NY Daily News (Jan. 19, 2025), https://www.nydailynews.com/2025/01/19/mdc-brooklyn-federal-jail-has-just-two-doctors-on-staff-hearing-reveals/; Katie Rose Quandt, et al., *Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for its Famous Detainees*, The Appeal (June 30, 2025), https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/; *see also* John Annese, *New photo shows maggot-infested food in MDC Brooklyn jail,* Feb. 21, 2025, DAILY NEWS, https://www.nydailynews.com/2025/02/21/new-photo-shows-maggot-infested-food-in-

he has not been able to sleep, has suffered harassment by other detainees, and is experiencing physical symptoms [redacted].

5. Mr. B respectfully asks this Court to order Respondents to immediately release him. Mr. B also respectfully asks that this Court order Respondents not to transfer him outside of the District for the duration of this habeas proceeding as any additional transfers would be detrimental to his health and relationship with legal counsel.

6. Every day that Mr. B spends in detention subjects him to further irreparable harm. Immediate relief is necessary to ensure that Mr. B is no longer subjected to continued violations of his substantive and procedural rights.

JURISDICTION AND VENUE

7. 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).

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

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mdc-brooklyn-where-diddy-and-luigi-mangione-are-held/ ("MDC has long been plagued with violence, serious understaffing, medical mistreatment, and grim living conditions").

9. Venue is proper in this District under 28 U.S.C. § 2241(d); 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1). Venue is proper in this District because Petitioner is presently detained within this District.

PARTIES

10. Petitioner is a Colombian national seeking asylum in the United States. He is currently detained in ICE custody at the Metropolitan Detention Center in Brooklyn, New York. Prior to his arrest and detention, he was living in Queens, New York.

11. Respondent Raul Maldonado Jr. is sued in his official capacity as Warden of the Metropolitan Detention Center in Brooklyn, New York. Respondent Maldonado is a legal custodian of Mr. B. His address is MDC Brooklyn, 80 29th St, Brooklyn, NY 11232.

12. 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 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.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Mr. B. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20536.

14. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Mr. B's ultimate legal custodian. Respondent Noem's office is located at 2801 Nebraska Avenue, N.W., Washington, D.C. 20528.

15. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Attorney General Bondi is responsible for administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). She is legally responsible for the pursuit of Petitioner's detention and removal. Respondent Bondi's office is located at the Robert F. Kennedy Building, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

EXHAUSTION

16. Administrative exhaustion is not a statutory requirement. *Quintanilla v. Decker,* No. 21-cv-417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021).

17. As a prudential matter, in cases challenging immigration detention, 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." *Id.* at *2 (citing *Beharry v. Ashcroft,* 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003); *see also Lopez Benitez v. Francis,* No. 25-cv-5937 (DEH), 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025) (excusing administrative exhaustion and granting habeas petition); *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025). A petitioner does not need to show or prevail on all factors for the Court to excuse administrative exhaustion. *See Lopez Benitez,* 2025 WL 2371588, at *13-14 (finding habeas petitioner had shown factors (1) and (4) and excusing administrative exhaustion on that basis and granting habeas relief).

18. Mr. B has no genuine opportunity for adequate relief. The Notice to Appear filed against him charges him as an "arriving alien," which prevents him from seeking a custody redetermination hearing before an immigration judge. *See* 8 U.S.C. § 1225(b)(2).

19. Mr. B has sought release from ICE. However, ICE has refused to conduct an individualized review of his custody, instead simply responding that he is "not eligible" for release because he is "subject to mandatory detention." *See* Ex. C, Release Request, dated October 14, 2025.

20. Additionally, Mr. B brings constitutional claims against Respondents, and immigration courts have "no authority to address Petitioner's constitutional challenge[.]" *Quintanilla,* 2021 WL 707062 at *2 (excusing exhaustion for noncitizen habeas petitioner challenging immigration detention and awarding habeas relief). Other district courts in this Circuit have already recognized that a noncitizen 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 is substantial. *Lopez Benitez,* 2025 WL 2371588, at *14 (a constitutional challenge to immigration detention "cannot properly be adjudicated administratively") (citing *Valdez v. Joyce,* No. 25-cv-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")); *Chipantiza-Sisalema v. Francis,* No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (excusing administrative exhaustion because the petition "has raised a substantial constitutional question").

STATEMENT OF FACTS

A. Petitioner Fled Colombia to Seek Asylum in the United States

21. Mr. B was born in 1986 in Bogota, Colombia. As an adult, Mr. B was diagnosed with [redacted] he suffered physical

abuse and death threats in Colombia. He was beaten numerous times [redacted] He [redacted] received death threats. *See* Ex. A, Declaration of Mr. B dated November 10, 2025 ("Pet. Decl.") ¶¶ 1-2.

22. In 2023, Mr. B came to the United States to seek safety from persecution and stability. *Id.* ¶ 3. He followed the process DHS had in place at the time for applying to enter the United States. He used the CBP One application and remained in Mexico while waiting for his appointment to be scheduled.[3] *Id.* ¶ 4.

23. The day of his scheduled appointment, on January 30, 2023, Mr. B presented himself at the southern U.S. border for his CBP One appointment and told the U.S. immigration officers he was seeking asylum in the United States. *Id.* Mr. B was patted down, inspected, and held in a room with other immigrants. *Id.* The DHS officer asked him questions about his fear of return to Colombia and about what he intends to do in the United States. *Id.* The DHS officer then granted him parole to enter the United States to seek asylum and placed him in removal proceedings by issuing him a Notice to Appear ("NTA"). *See id.*

24. Mr. B ultimately settled in New York City, where he reunited with his partner and her child who had also been paroled into the United States. Mr. B filed a Change of Address form with immigration officials when he moved to New York City to ensure the immigration court had his correct address. *See id.* ¶¶ 6-7.

25. After arriving in New York City, Mr. B was connected with medical care to manage his [redacted] stable housing through New York City's [redacted]

[3] For information about the history of CBP One, see American Immigration Counsel, CBP One: An Overview Fact Sheet, Mar. 24, 2025, https://www.americanimmigrationcouncil.org/fact-sheet/cbp-one-overview/ (last accessed Nov. 13, 2025).

[redacted][4] *See* Pet. Decl. ¶¶ 7-10.

26. Prior to his detention, Mr. B was receiving regular medical treatment and support from Dr. [redacted] at the [redacted] in Brooklyn, NY. He was "very consistent" [redacted] *See* Ex. B, Letter from Bryan Tolentino, MD dated October 16, 2025 ("Dr. Tolentino Ltr."). [redacted] 'before he was detained, he was in overall good physical health." *Id.*

27. [redacted] As a result, prior to being detained, Mr. B "remained with [redacted] thanks to the care provided at [redacted]" *Id.* Mr. B's health also benefited from the "assistance from [redacted]" *Id.*

28. In September 2023, Mr. B and his partner registered as domestic partners in New York.

[4] *See* [redacted]

29. Mr. B applied for an Employment Authorization Document (EAD), or a work permit, on the basis of his parole. On November 15, 2023, Mr. B's application was granted and DHS issued him an EAD, allowing him to lawfully work in the United States.

30. On January 30, 2024, Mr. B timely filed an application for asylum with the immigration court.

B. Petitioner's Sudden Arrest and Detention by ICE at Immigration Court

31. Mr. B was scheduled for his first immigration court status hearing, known as a Master Calendar Hearing, at the 26 Federal Plaza New York Immigration Court on August 21, 2025.

32. The night before his court date, Mr. B laid out his clothes and took his partner and her child to dinner. Pet. Decl. ¶ 12. He had heard of people getting arrested at their immigration hearings, but he wanted to continue to follow the appropriate process to apply for asylum and he expected there would be no issues because he is a law-abiding, respectful person. He had dutifully made a CBP One appointment, waited in Mexico until his scheduled appointment, and complied with law enforcement at the border. He was paroled into the United States, so he thought that he had nothing to worry about. Aside from a driving without a license violation—a non-criminal offense—that Mr. B received in August 2024, resulting in a fine, he had never been in trouble.

33. At around 8:30 a.m. on August 21, 2025, Mr. B appeared at 26 Federal Plaza for his immigration court hearing. Court staff told him to go to the 12th and then 14th and then back to the 12th floor. He was led into a large room where he sat with other people appearing for their court hearings. The immigration judge read names out loud, and said the people named would be scheduled to return to court on June 16, 2026 and if they did not show up they would receive orders of deportation. Pet. Decl. ¶ 13.

34. Mr. B waited until the immigration judge called his name, made a note of his next court date, and waited to be told by the judge that he could leave. He noticed that ICE agents were lining up by the exit of the room. *Id.*

35. Once the immigration judge dismissed all the people in the room, Mr. B and the others made their way to the lobby to exit the building. There, ICE agents crowded by the exit and began to grab people. The agent that grabbed Mr. B took his arms and twisted them behind his back. As a child in Colombia, Mr. B sustained a collarbone injury, which was aggravated by the ICE agent's force, so he yelped out in pain and told the ICE agent that he had an injury and to please be gentle with him. The ICE agent began twisting his arm harder, such that Mr. B felt a searing pain and felt tears stream down his face. Mr. B thought that his collarbone was going to break again. *Id.* ¶ 14.

36. Mr. B was processed and taken to a separate holding area in 26 Federal Plaza. *Id.* ¶ 15.

37. Mr. B was not allowed to call anyone for hours. At 6 p.m., he was finally able to call his partner and tell her what had happened. They cried together over the phone; an ICE agent ended the call before he could say goodbye. *Id.* ¶ 18.

38. Mr. B spent the night at 26 Federal Plaza, sleeping by an open toilet and getting an apple as a meal, and the next day, on August 22, 2025, Mr. B was transferred to MDC. *Id.* ¶¶ 19-20.

C. Petitioner's Health Quickly Deteriorates While in ICE Custody

39. At MDC, Mr. B did not receive [redacted] medication for more than a week. [redacted] His health deteriorated quickly, [redacted]

[redacted]; that is when the medical staff at MDC took notice. [redacted] *Id.* ¶¶ 23-24.

40. As Dr. Tolentino describes, missing medication dosages and receiving inconsistent and inadequate care [redacted] poses a significant risk to Petitioner's health and well-being: "[B]reakage in care such as what would happen with detention by ICE and deportation would be directly detrimental to the patient's physical wellbeing. [redacted]

41. After being detained, immigration counsel from Brooklyn Defender Services ("BDS") began representing Mr. B *pro bono*. On October 1, 2025, Mr. B's BDS representatives requested his full medical records from the Federal Bureau of Prisons ("BOP") per their FOIA requirements. The BOP FOIA team sent back an automated email saying the request is unable to be processed due to the government shutdown. BDS asked ICE for assistance in obtaining the medical records to which ICE responded: "All medical records would need to be requested through BOP. We cannot facilitate this." Mr. B's legal team has thus been unable to verify [redacted].

42. On October 14, 2025, Mr. B's immigration counsel requested via an email to ICE officials that ICE release Mr. B from custody. ICE responded by email that day stating, incorrectly, that "your client is subject to mandatory detention and not eligible for release." *See* Ex. C, Release Request Email, dated October 14, 2025. ICE continued to assert that [redacted]" *Id.* When counsel replied asking to see the medical records that

would support that statement, which ICE had previously said were unavailable to share with counsel, the ICE officer responded that "[t]he denial [of release] is based on him being subject to mandatory detention, not his medical records." *Id.*

43. Since arriving at MDC on August 22, 2025, Mr. B is worried about his health because he knows that with his [redacted] diagnosis, he requires [redacted] and he is not receiving the necessary care. *See* Dr. [redacted] Ltr. [redacted] Pet. Decl. ¶ 28. [redacted]

44. Mr. B is worried about his health [redacted] Mr. B is afraid that if he does not [redacted] Pet. Decl. ¶ 27. On October 27, 2025, Mr. B was finally given a medical exam [redacted] However, Mr. B is not receiving the same standard, level of care as he was able to receive in the community, and he will likely suffer long-lasting health effects as a result. *See* Dr. [redacted] Ltr.

45. Mr. B's detention in ICE custody is his first time in any carceral setting and it is impacting his mental health. He is fearful that [redacted]

Pet. Decl. ¶ 26, *compare id.* ¶¶ 8-9 (describing how he felt safe with lessened anxiety about his [redacted]

46. Mr. B's partner is very worried about his health while in detention and tries to call him every day to check in on him and hear his voice. Mr. B is used to being a provider for his loved ones and is worried that his detention is causing undue stress and a financial burden on his partner and her child. Before being arrested, he was regularly working and supporting his partner and her daughter. Mr. B would also send money to his disabled mother in Colombia and gets extremely emotional thinking about how she is not able to afford enough food and medical care to be comfortable in Colombia. *Id.* ¶¶ 10, 32. Furthermore, [redacted] he may lose his home as result of being detained.

D. Petitioner's Removal Proceedings

47. Mr. B's removal proceedings are currently pending at 201 Varick Street, New York, NY 10014 and he continues to seek asylum before the immigration court.

48. Mr. B had a master calendar hearing on October 31, 2025 and is next scheduled for an evidentiary hearing on his asylum application on December 12, 2025.

LEGAL AUTHORITY

A. Legal Authority For Detention, Release On Parole, And Parole Revocation For Asylum Seekers

49. Although civil immigration detention is authorized by statute, to comply with Due Process detention can serve 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).

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

51. This test requires a process sufficient to mitigate the risk of erroneous deprivation of Petitioner's 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-cv-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").

52. Various statutes in the Immigration and Nationality Act provide a basis for immigration authorities to detain noncitizens pending removal from the United States. *See* 8 U.S.C. §§ 1225, 1226. For noncitizens who are applicants for admission and seeking admission to the United States, the statute authorizes their detention under 8 U.S.C. § 1225(b)(2) during the pendency of their removal proceedings.[5] Detention under 8 U.S.C. § 1225(b)(2) is at times called "mandatory" detention as it does not provide for a statutory right to a bond hearing.

[5] 8 U.S.C. § 1225(b)(1) contains additional statutes authorizing detention of individuals in certain circumstances who are in expedited removal proceedings. Petitioner was never placed in expedited removal proceedings and these provisions are not relevant to this Petition.

53. However, DHS may release noncitizens subject to detention under 8 U.S.C. § 1225(b)(2) on parole following an individualized determination, "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5).

54. Federal regulations specify that DHS may only release such noncitizens 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.

55. The applicable regulations further contemplate parole for specific groups of noncitizens 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).

56. For noncitizens who are already within the United States and who are placed in removal proceedings under 8 U.S.C. § 1229a, detention is generally governed by 8 U.S.C. § 1226, which permits a noncitizen to be "arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a); *see Jennings v. Rodriguez*, 583 U.S. 281, 288-89, (2018). Section 1226(a) provides for what is termed "discretionary" detention, as noncitizens detained under that section are permitted to ask an immigration judge to review their custody at a bond hearing. *Id.*[6]

57. Under 8 U.S.C. § 1226(a), DHS first makes an initial custody determination pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to

[6] Some noncitizens may be ineligible for bond, *i.e.*, held in "mandatory" detention, due to specific criminal arrests and convictions not relevant to this Petition. *See* 8 U.S.C. § 1226(c).

property or persons, and that the alien is likely to appear for any future proceeding." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez*, 2025 WL 2371588, at *10.

B. DHS Upends its Courthouse Arrest Policy and Begins a Campaign of Arresting People DHS Had Previously Released

58. For years, DHS largely refrained from conducting civil immigration arrests at courthouses, including immigration courts, out of recognition that conducting such arrests could deter noncitizens from attending mandatory court proceedings and disrupt the proper functioning of courts. Specifically, there was a longstanding practice of refraining from conducting civil arrests of noncitizens in and around immigration court. This was memorialized in a policy of minimizing arrests at courthouses, including at immigration courts.

59. An April 27, 2021 Memorandum to ICE and U.S. Customs and Border Protection ("CBP") from the Acting Directors of ICE and CBP titled "Civil Immigration Enforcement Actions in or near Courthouses" (hereinafter "2021 Memo") only permitted ICE officers to conduct "civil immigration enforcement action . . . in or near a courthouse if (1) it involve[d] a national security threat, or (2) there [was] an imminent risk of death, violence, or physical harm to any person, or (3) it involve[d] hot pursuit of an individual who poses a threat to public safety, or (4) there [was] an imminent risk of destruction of evidence material to a criminal case." DHS, ICE, *Civil Immigration Enforcement Actions in or near Courthouses* (Apr. 27, 2021).[7] "In the absence of a hot pursuit," ICE was permitted to make civil arrests against "an individual who poses a threat to public safety" only if "(1) it is necessary to take the action in or near the courthouse

[7] *Available at https://www.ice.gov/sites/default/files/documents/ciEnforcementActionsCourthouses2.pdf.*

because a safe alternative location for such action does not exist or would be too difficult to achieve the enforcement action at such a location, and (2) the action has been approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director." *Id.* at 2. The 2021 Memo covered "immigration courts." *Id.*

60. One of the core principles underlying the 2021 Memo was that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice." *Id.* at 1.

61. But DHS reversed course in 2025, implementing a new immigration courthouse arrest policy that not only permits the expansion of civil immigration arrests in and around courthouses, but actively targets noncitizens attending required hearings for civil arrest in and around immigration courthouses. DHS did so without any explanation for how this reversal might impact noncitizens' access to courts and the fair administration of justice.

62. On or around January 20, 2025, ICE rescinded the 2021 Memo and issued interim guidance to all ICE employees regarding civil immigration enforcement actions in or near courthouses. *See* DHS, ICE, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* (Jan. 20, 2025) (hereinafter "January 2025 Interim Memo").[8] The interim memo was made final on May 27, 2025 through a memorandum issued by the Acting Director of ICE. *See* DHS, ICE, *Civil Immigration Enforcement Actions In or Near Courthouses* (May 27, 2025) (hereinafter, "May 2025 Memo").[9]

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[8] *Available at* https://www.ice.gov/doclib/foia/policy/11072.3_CivilImmEnfActionsCourthouses_01.21.2025.pdf

[9] *Available at* https://www.ice.gov/doclib/foia/policy/11072.4.pdf.

63. This new guidance permits "ICE officers or agents [to] conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted alien(s) is or will be present at a specific location." *Id.* at 2. This policy nonetheless cautions immigration officials that "ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated to non-criminal proceedings (e.g. family court, small claims court)" unless operationally necessary or there is approval from the Field Office Director or the Special Agent in Charge. *Id.* at 2. The January 2025 Interim Memo and the May 2025 Memo represent a reversal of the 2021 Memo and long-standing practice. The result is DHS's dramatic expansion of civil immigration arrests by ICE officers at immigration courthouses across the country, including in New York.[10]

64. The 2025 courthouse arrest policy does not consider or discuss the risk that immigration enforcement in or near courts will chill access to courts and impair the fair administration of justice as DHS cautioned in the 2021 Memo. Instead, the new policy memo claims that enforcement at or near courthouses "can reduce safety risks to the public, targeted alien(s), and ICE officers and agents" and is required "when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody." May 2025 Memo at 1.

65. The May 2025 Memo is substantively the same as the January 2025 Interim Memo, except it removes a line limiting civil immigration arrests in courthouses "where such action is not precluded by laws imposed by the jurisdiction in which the enforcement action will take."

[10] Andrew Rice and Stephane Keith, *Portfolio: The Trap at 26 Federal Plaza – Every day immigrants arriving for routine hearings are targeted by ICE agents and taken from their families,* New York Magazine (Oct. 20, 2025), https://nymag.com/intelligencer/article/26-federal-plaza-nyc-immigration-court-ice-agents-detainments-deportations.html.

Compare January 2025 Interim Memo at 2 *with* May 2025 Memo at 2. Thus, DHS's 2025 courthouse arrest policy purports to allow ICE to conduct civil immigration arrests at courthouses even if such arrests would violate local or state law.

66. Immigration arrests of people attending their court hearings in immigration courts were previously infrequent, if not entirely unheard of. Now, such ICE arrests of noncitizens are occurring at unprecedented rates, and significantly in New York.[11]

> "ICE agents are focusing on the willing and unwitting people who present themselves at three immigration courts," with the main hub being 26 Federal Plaza. "Migrants appear before a judge and are given a date for another hearing, leaving them hopeful and thinking they are free to go. Then, the moment they step outside the courtroom, they are arrested and hustled away."[12]
>
> This is "an abuse of the courts system and puts immigrants into an impossible position. If they turn up for court hearings, as they are instructed to do, they could be arrested. But if they skip their court date, a judge could automatically order their deportation."[13]

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[11] *See, e.g.,* Kayla Epstein, *'They treated us like animals' - Inside the epicentre of deportations in New York City*, BBC News (Oct. 10, 2025), https://www.bbc.com/news/articles/cn0rxrxd444o; Julia Ingram, *ICE agents target New York City immigration courts more often than others, new analysis suggests*, CBS News (Oct. 8, 2025), https://www.cbsnews.com/news/ice-agents-new-york-city-immigration-courts-analysis/; Luis Ferre-Sadurni and Dana Rubenstein, *ICE, Shifting Tactics, Detains High School Student at N.Y.C. Courthouse*, N.Y. Times, May 27, 2025, https://www.nytimes.com/2025/05/27/nyregion/new-york-student-arrested-ice.html; Gwynne Hogan, *Migrants, Protesters and a Pastor Arrested Inside and Outside Manhattan Immigration Courthouses*, The City, May 28, 2025, https://www.thecity.nyc/2025/05/28/ice-arrests-migrants-26-federal-plaza-pastor/; Carla Gloria Colome, *'It's Terrible What's Happening': Panic at New York's Immigration Courthouses Due to ICE Arrests*, Documented, May 29, 2025, https://documentedny.com/2025/05/29/manhattan-ice-arrests-new-york-immigration-courthouses/; Dean Moses, *ICE in courts: One immigrant's hearing turns into 'murderous reality show' that ends with chaotic arrest, traumatized family, Lander says*, amNY, July 16, 2025, https://www.amny.com/immigration/ice-hearing-arrest-reality-show-lander-07162025/

[12] *Id.*

[13] Kayla Epstein, *'They treated us like animals' - Inside the epicentre of deportations in New York City*, BBC News (Oct. 10, 2025), https://www.bbc.com/news/articles/cn0rxrxd444o

C. The Appropriate Remedy Is Release

67. The proper remedy for Mr. B's habeas petitions is release. The alternative, a bond hearing, cannot rectify the injury the Government has already done, and is doing now, to Mr. B's Fifth Amendment rights. *Lopez Benitez,* 2025 WL 2371588 at *13 ("[A bond hearing 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."). The harm Mr. B has suffered is specifically DHS's failure to conduct any individualized custody determination and offer any due process *before* detaining him: "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,* 2025 WL 1927931, at *3 (ordering habeas relief to noncitizen). Irreparable injury has occurred and will continue to occur if Mr. B is not released. "[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) (collecting cases).

68. In addition to the baseline harm of unlawful and arbitrary detention, since Mr. B was taken into custody on August 21, 2025, Respondents have deprived him of access to his [redacted] medication [redacted] This is no theoretical harm or conjectural injury: Mr. B has *already* been deprived of medicine that is necessary to [redacted]. *See supra* ¶¶ 39-40. He is also unable to work to support his family in New York and Colombia and is at risk of losing his housing.

69. If this Court does not act, Petitioner's detention will continue for months or longer, as DHS has stated they are holding Petitioner in "mandatory" detention without the opportunity to request a bond hearing. *See* Release Request. Only release will remedy the constitutional harms that Mr. B has, and will continue to, suffer.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution – Procedural Due Process

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

71. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. CONST AMEND. V.

72. DHS made the reasoned decision to parole Mr. B into the United States while he pursued his asylum claim, finding that he was not a flight risk or danger. Although no relevant facts or circumstances changed, years later, ICE later abruptly took him into custody while he was appearing in immigration court, absent any process. This does not comport with due process, which requires, at a minimum, notice and an opportunity to respond prior to the deprivation of liberty at a hearing before a neutral adjudicator. *See, e.g.*, *Torres-Jurado v. Biden*, No. 19-cv-3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (explaining that, in parole revocation, "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)); *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-cv-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 v. Andrews*, No. 25-cv-00801, 2025 WL 1918679 at *20 (E.D. Cal. July 11, 2025) (ordering release of noncitizen 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").

73. In addition, at no time did DHS conduct an individualized assessment of the need for Petitioner's detention. Instead, he was subject to ICE raids at immigration courthouses to arrest people DHS had previously released. ICE's failure to conduct an individualized review prior to detention violates due process and requires release. *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"); *Kelly v, Almodovar*, No. 25-cv-6448, 2025 WL 2381591 at *3 (S.D.N.Y. Aug. 15, 2025) (ordering immediate release of Petitioner and writing that "[t]he suggestion that government agents may sweep up any person they wish and hold that person in the conditions in which Kelly was held 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"); *Lopez Benitez*, 2025 WL 2371588 at *14-15 (ordering immediate release of Petitioner re-detained in immigration court and noting "[i]n practice, Respondents seem to be detaining some arbitrary

portion of such individuals as they leave their regularly scheduled immigration court proceedings. But treating attendance in immigration court as a game of detention roulette is not consistent with the constitutional guarantee of due process").

SECOND CLAIM

Violation of the Fifth Amendment Right to Due Process – Substantive Due Process

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

75. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. CONST AMEND. V. The only proper purposes for immigration detention are to protect against a risk of flight or danger to the community.

76. The Fifth Amendment of the Constitution further guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates the substantive due process rights of a person in civil immigration detention if it "takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]" *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019).

77. Mr. B is not a flight risk nor is he a danger to the community. Respondents' detention of Mr. B is therefore unjustified and unlawful. Accordingly, Mr. B's detention is punitive and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

78. Petitioner's serious medical issue conditions place him at a heightened risk of suffering serious medical harm, or even death, without consistent treatment and monitoring. Because Respondents are aware that failing to adequately protect Petitioners could have tragic

results and yet have not taken necessary or appropriate precautions, Respondents have acted with deliberate indifference to Petitioners' serious medical needs in violation of the Due Process Clause.

79. Mr. B's detention without any individualized review of the need for his detention, a lack of consideration of any risk of flight risk or danger or medical issues that counsel against detention, and his ongoing deficient medical care which subjects him to serious risk of adverse health effects, serious harm, or even death due to disruptions of care [redacted] violates substantive due process.

THIRD CLAIM

Violation of the Fourth Amendment to the U.S. Constitution – Unlawful Arrest

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

81. In January 2023, Mr. B followed the process in place for applying for asylum at the southern border of the United States. DHS then exercised its discretion under the Immigration and Nationality Act to release, or parole, him while he litigated his removal proceedings. At the time of Mr. B's ICE arrest in August 2025, he had been living at liberty pursuant to a parole determination by federal immigration authorities.

82. DHS lacked any information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty in the community. His arrest based solely on the fact that he is subject to removal proceedings is unreasonable and violates the Fourth Amendment.

FOURTH CLAIM

Violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 706

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

84. Mr. B was arrested pursuant to the government's policy of targeting people who appear for their immigration hearings for arrest in immigration courthouses. That policy is arbitrary and capricious because it is an unreasoned departure from recent and longstanding agency policy and practice.

85. The DHS's courthouse arrest policy fails to consider multiple important downsides. Arresting people who appear for their court proceedings will disincentivize people from attending those proceedings, even where they have meritorious claims for relief, and impede the fair administration of justice. People who appear for their immigration proceedings are not flight risks and therefore do not need to be detained while their proceedings are pending.

86. Despite these baseline requirements, DHS now regularly re-detains people in immigration proceedings, notwithstanding the lack of any changed circumstances from their earlier determination to release. Moreover, they re-detain people without providing any notice or process whatsoever. These re-detentions violate noncitizens' right to due process. *See supra*, First Claim, ¶¶ 72-73.

87. Mr. B's arrest pursuant to DHS's policy are final agency actions that violate the Administrative Procedure Act, 5 U.S.C. § 706(2).

FIFTH CLAIM

Violation of the Immigration and Nationality Act and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706

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

89. DHS's arrest of Mr. B immediately after he exited an immigration court proceeding in which he was a party violates the common law privilege against civil arrests while coming to,

attending, and returning from court. This common law protection is incorporated into the Immigration and Nationality Act.

90. Therefore, the policy is in excess of statutory authority because the INA does not authorize civil arrests in and around courthouses.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;
2) Enjoin the Respondents from transferring the Petitioner away from the jurisdiction of this District pending these proceedings;
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 the Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the Administrative Procedure Act, and the Immigration and Nationality Act;
5) Issue a Writ of Habeas Corpus ordering Respondents to immediately release the Petitioner from custody, restoring him to the same conditions that preceded his detention;
6) Award the Petitioner reasonable attorneys' fees and costs for this action under the Equal Access to Justice Act, 28 U.S.C. § 2414; and
7) Grant the Petitioner any other relief this Court deems just and proper.

Dated: November 14, 2025
Brooklyn, New York

Respectfully submitted,

/s/ Lucas Marquez
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