UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

L.R.C.,

Petitioner,

v.

Raul MALDONADO JR., Warden of Metropolitan Detention Center; Bryan FLANAGAN, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Daren K. MARGOLIN, Director, Executive Office for Immigration Review.

Respondents.

Case No. 1:25cv6825

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, L.R.C.,[1] is a 48-year-old Venezuelan national who fled his home country to escape political persecution and gang violence. Ex. A. Despite having no criminal history, he is currently detained by Respondents in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. Ex. B. His detention is unlawful because L.R.C. was previously released on his own recognizance by ICE and his re-detention without individualized consideration, without changed circumstances and without a notice and opportunity to respond, violates due process. His detention is further unlawful as it has continued for six months without individualized review and results from a misclassification by the Department of Homeland Security ("DHS") and the Executive Office for Immigration

[1] Accompanying this petition is a motion by Petitioner to proceed by initials and to redact his alien identification number, complete date of birth and photograph in accompanying documents.

Review ("EOIR"), which have erroneously determined that L.R.C. is subject to mandatory detention based on an abrupt departure from decades of settled agency precedent and an incorrect interpretation of the applicable statutes and regulations in the Immigration and Nationality Act ("INA").

2. L.R.C. was forced to leave Venezuela because he publicly denounced government corruption and faced repeated threats against his life. Facing the prospect of prolonged torture and death, L.R.C. embarked on a harrowing journey to safety. *Id.*

3. L.R.C. entered the United States in April 2024. Ex. A. He was processed by DHS and released on his own recognizance, reflecting that he posed no flight risk and presented no danger to the community. *See* Ex. C. L.R.C. subsequently moved to New York, New York, and continued to pursue relief in immigration removal proceedings. L.R.C. complied with the conditions of his release, including attending his follow-up appointment with ICE on April 22, 2025. Ex. D. L.R.C. also received a valid work authorization. Ex. E.

4. L.R.C. lived peacefully, working as a day laborer, attending church, and caring for his niece and grandniece. Ex. F, G, H, and I. He built strong ties within his community and actively participated in several church-run programs, where facilitators described him as a compassionate and supportive leader who uplifted fellow participants. *Id.*

5. However, despite releasing L.R.C. on his own recognizance, and without any notice or change in circumstances, ICE abruptly and unexpectedly arrested L.R.C. on June 11, 2025, during an immigration enforcement operation while L.R.C. was beginning his workday. Ex. J and K. Respondents' abrupt re-detention of L.R.C. without any individualized consideration and without notice, showing of changed circumstances, or opportunity to respond, violates due process. District courts around the country have recognized that noncitizens facing civil re-detention have

a constitutionally protected interest in their continued liberty and in due process prior to re-detention. *See, e.g.*, *Rojas v. Almodovar*, 25-cv-7189 (LJL), 2025 WL 3034183, at *9 (S.D.N.Y. October 30, 2025) ("[Petitioner] was paroled into the United States. He lived here freely for years. His parole status was never revoked. He is therefore entitled to notice of such revocation before it occurs, and an individualized explanation as to why."); *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (immigration courthouse arrest without notice violated due process); *Ramirez Lopez v. Trump* et al., 25 Civ. 4826 (JAV), ECF No. 31 (S.D.N.Y. July 10, 2025) (granting temporary restraining order and release because re-detention of person on order of supervision without notice likely violated due process).

6. In addition, Respondents unlawfully refuses to release L.R.C. from custody or to provide him with a bond hearing, relying on a new ICE policy and a new, erroneous statutory and regulatory interpretation of the detention statutes by the Board of Immigration Appeals ("BIA"). *See* "Interim Guidance Regarding Detention Authority for Applications for Admission" dated July 8, 2025, Ex. L.[2] *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (reversing decades of agency practice and precedent and concluding that individuals who enter without admission fall under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) and are ineligible for consideration of on bond.)

7. L.R.C.'s continued detention violates the plain language of the Immigration and Nationality Act ("INA"). The mandatory detention provision under 8 U.S.C. § 1225(a)(1),

[2] Also accessible at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

(b)(2)(A)[3] applies only to individuals "seeking admission—it does not apply to noncitizens who have already entered the country and are residing here at the time ICE seeks to detain them. Individuals like L.R.C.—who were released on recognizance and are already present within the country at the time of ICE arrest and detention —have consistently been processed under 8 U.S.C. § 1226(a),[4] which permits release on bond or parole.

8. Respondents' reinterpretation of § 1225(b)(2)(A) has been rejected by the vast majority of courts that have considered this issue, including in cases like L.R.C.'s, where the individual was previously released on parole or on their own recognizance. *See, e.g., J.U. v. Maldonado*, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, Dkt. 65 (W.D. Wash., Sept. 30, 2025) (granting summary judgment that members of a noncitizen class were detained under 8 U.S.C. § 1226(a) and not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and that the practice of denying bond to class members on the basis of § 1225(b)(2) violated the INA); *Rodriguez v. Bostock*, 2025 WL 1193850 at *14 (W.D. Wash. Apr. 24, 2025) (granting preliminary

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[3] "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

"Subject to subparagraphs (B) and (C), 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 for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

[4] "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1)may continue to detain the arrested alien; and

(2)may release the alien on—

(A)bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B)conditional parole;" 8 U.S.C. § 1226(a). . ." 8 U.S.C. § 1226(a)

injunction); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he Court rejects the notion that § 1225(b) applies to all such individuals[.]"); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *9 (D. Mass. Oct. 3, 2025) (granting habeas petitioner preliminary injunction because he was likely to succeed on merits of claim for entitlement to bond hearing rather than mandatory detention); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *2 (S.D.N.Y. Oct. 28, 2025) (noting that the cases in favor of petitioner "are so numerous that only a

handful are cited here as illustrative examples."). L.R.C. likewise seeks an order that § 1226(a) is the proper statutory basis for his detention, not § 1225(b).

9. Lastly, L.R.C. has spent six months continuously detained by ICE at various detention facilities without due process and with no end in sight. His immediate release must be ordered, or, in the alternative, if a bond hearing is ordered, the government must carry the burden by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

10. Accordingly, L.R.C. seeks a writ of habeas corpus ordering that he be released from detention immediately based on his re-detention without due process and without a lawful basis. In the alternative, L.R.C. seeks an individualized bond hearing within seven days under § 1226(a) where the government bears the burden of proof by clear and convincing evidence to justify continued detention.

JURISDICTION

11. L.R.C. is in the physical custody of Respondents. L.R.C. is detained by ICE at MDC in Brooklyn, New York.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2243, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of New York, the judicial district in which L.R.C. currently is detained. *See* Ex. B.

15. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner, L.R.C., is citizen of Venezuela who has been detained by ICE since June 11, 2025. Ex. J. He is currently held at the MDC in Brooklyn, New York. He was residing in New York, New York prior to his detention.

19. Respondent Raul Maldonado Jr. is employed by the Bureau of Prisons ("BOP") as Warden of the MDC, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent Bryan Flanagan is the Director of the New York Field Office of ICE's Enforcement and Removal Operations Division. As such, Field Office Director Bryan Flanagan is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the EOIR and the immigration court system it operates is a component agency. She is sued in her official capacity.

23. Respondent Daren K. Margolin is the Director of EOIR. He is responsible for ensuring the implementation and adherence to the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

FACTS

24. L.R.C. has resided in the United States since April 6, 2024, and lives in New York. Ex. A (Declaration of S. Park); Ex. F, G, H, and I (Letters of Support). Prior to arriving in the United States, he lived in Cumana, Venezuela. Ex. A.

25. L.R.C. was born in 1977, in Cumana, Sucre, Venezuela. Ex. A at 1. He is married and has two young children. Ex. A.

26. L.R.C. fled Venezuela because he feared political persecution and gang violence. Ex. A. As a former public servant, he openly opposed government corruption, supported an opposition political party, and witnessed colleagues detained and tortured for similar views. *Id.*

L.R.C. faced repeated threats against his life. Facing the prospect of prolonged torture and death, L.R.C. embarked on a harrowing journey to safety. *Id.*

27. On April 5, 2024, L.R.C. entered the United States, was processed by DHS and charged under 8 U.S.C. § 1182(a)(6)(A)(i) as an inadmissible noncitizen. Ex. M (ICE Case Summary). He was placed into full removal proceedings and issued a Notice to Appear. *Id.*

28. At that time, DHS determined that L.R.C. should be released on his own recognizance. Ex. C (Order of Release on Recognizance). He was not detained, reflecting DHS's assessment that he posed neither a flight risk nor a danger to the community. *Id.*, Ex. J (ICE Encounter History) at 2.

29. The release on recognizance paperwork issued by Respondents indicates that L.R.C. was released under INA § 236, 8 U.S.C. § 1226. Ex. C.

30. Following his entry into the country, L.R.C. traveled briefly to Pennsylvania and ultimately to New York City, where he has a niece and grandniece.

31. L.R.C. applied for and obtained an Employment Authorization Document ("EAD") on December 3, 2024, as allowed based on his pending asylum application, which he filed June 5, 2024.[5] *See* Ex. E (EAD Document).

32. L.R.C. has fully complied with the terms of his release. He attended a follow-up appointment with ICE at the New York Field Office on April 22, 2025 and continued to remain released on his own recognizance, with a next reporting date from April 22, 2026. Ex. D (ICE Reporting Date).

[5] *See Hyppolite*, 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) ("[DHS] also provided him with work authorization on June 7, 2025, just one month before he was detained. If his detention is and has always been 'mandatory' under § 1225[b](2)(A), as Respondents now claim, it is hard to see how the United States government would, or even could, have granted him permission to seek employment outside the confines of an ICE detention facility as recently as June 2025.").

33. Since settling in New York, L.R.C. has lived peacefully, working as a day laborer, attending church, and caring for his niece and grandniece. Ex. F, G, H, and I. He built strong ties within his community and actively participated in several church-run programs, where facilitators described him as a compassionate and supportive leader who uplifted fellow participants. *Id.*

34. On June 11, 2025, L.R.C. was unexpectedly arrested by ICE in an immigration raid while waiting for his workday to begin, despite ICE's prior decision to release him on recognizance under § 1226(a) and despite the lack of any new factual circumstances. Ex. J. After making his daily multi-hour commute to obtain work, L.R.C. was approached by ICE officials who did not identify themselves as law enforcement. Ex. K (Declaration of L.R.C.) . Despite presenting his valid work authorization, ICE officers handcuffed him and took him into custody. Ex. J.

35. Respondents issued an I-200 Warrant for Arrest dated June 11, 2025, listing the basis for L.R.C.'s arrest and re-detention as INA 236, 8 U.S.C. § 1226. Ex. N (I-200 Warrant).

36. Following his abrupt and unexpected ICE arrest, L.R.C. was transferred to 26 Federal Plaza where he spent several days in inhumane conditions. Ex. K. He was later transferred for a short period to Nassau County Jail and since that time has been held at MDC in Brooklyn, New York, where he remains at this time. *Id.*, Ex. B.

37. L.R.C. has never been arrested or convicted of a crime. The current incarceration by ICE is dangerous, demoralizing, and takes a great toll on his physical and mental well-being.

38. L.R.C. is actively pursuing asylum in removal proceedings based on his fear of persecution in Venezuela. *See* Ex. A. His hearings, however, have been repeatedly postponed, during which time he has remained detained. *Id.* For example, on November 26, 2025, DHS abruptly canceled the second part of his scheduled asylum merits hearing when the jail did not take him to court.

39. L.R.C. is neither a flight risk nor a danger to the community. He has developed strong ties with his local community. Multiple community members have submitted declarations attesting to his good character in support of his asylum application. Ex. F, G, H, and I.

40. ICE unlawfully arrested and re-detained L.R.C. and continues to hold him without an opportunity to post bond or be released on other conditions.

41. As set forth below, pursuant to *Matter of Yajure Hurtado*, the immigration judge ("IJ") is unable to consider L.R.C.'s bond request.

42. As a result, L.R.C. remains detained without individualized review for nearly six months. Without relief from this Court, he faces many more months, and potentially years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

I. Respondents' Re-Detention of Petitioner Without Individualized Review or the Opportunity for A Bond Hearing Violates Due Process.

43. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

44. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

45. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690–91.

46. Revocation of release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest is well-established in the context of parole, probation, and release from civil immigration confinement. *See Valdez v. Joyce*, 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").

47. Due process requires that, at a minimum, "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022); *J.U.*, 2025 WL 2772765, at *10 (applying the *Mathews* test and concluding that "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.").

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

49. In *Morrissey*, the Supreme Court held that to comport with due process, a hearing is necessary to determine whether "the individual has in fact breached the conditions of parole" to protect not only the individual's protected liberty interests, but also the interest of society "in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole." *Id.* at 483–84 (citing *People ex rel. Menechino v. Warden*, 27 N.Y.2d 376, 379, n. 2 (1971)).

50. A year later, the Supreme Court held that due process also mandates a hearing prior to the revocation of probation. *Scarpelli*, 411 U.S. at 778. Applying *Morrissey*, the Supreme Court held that "[e]ven though the revocation of parole is not a part of the criminal prosecution, . . . the loss of liberty entailed is a serious deprivation requiring that the [individual] be accorded due process." *Id.* at 781. "Accordingly, we hold that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey*." *Id.* at 782.

51. This rationale equally applies to the revocation of bond and conditions of release and re-detention by ICE. *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) ("'It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.'"). District courts around the country have recognized that noncitizens facing civil re-detention share this constitutionally protected interest in their continued liberty. *See, e.g.*, *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025) (immigration courthouse arrest without notice violated due process); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (immigration courthouse arrest without

notice violated due process); *Ramirez Lopez v. Trump* et al., 25 Civ. 4826 (JAV), ECF No. 31 (S.D.N.Y. July 10, 2025) (granting temporary restraining order and release because re-detention of person on order of supervision without notice likely violated due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, *2 (S.D.N.Y. June 18, 2025) (immigration courthouse arrest without notice violated due process); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *13 (W.D.N.Y. May 2, 2025) ("[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process."); *see also Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them—has particular relevance here, where Rosado's detention was previously found to be unnecessary to serve any purpose."); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Prieto Salazar v. Kaiser, et. al*, No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug. 26, 2025); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised "serious questions going to the merits" that she had a "vested interest" in her continued release from immigration detention). Indeed, as one district court recognized, a petitioner subject to a civil detention scheme has an "arguably greater" liberty interest "than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the noncitizen petitioner had a "liberty interest in remaining out of [immigration] custody").

52. Despite these baseline requirements, Respondents re-detained L.R.C. without notice or opportunity to respond, and without any showing of changed circumstances regarding danger or flight risk, despite an earlier determination to release L.R.C. on his own recognizance.

53. Because L.R.C.'s prior bond and conditions of release have been unlawfully revoked and he has been incarcerated without due process, his immediate release must be ordered. *See Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128 (W.D.N.Y. 2025) (applying *Mathews* test to find that parole revocation without notice likely violated due process) (*citing Mathews v. Eldridge*, 424 U.S. 319 (1976)); *Kiareldeen v. Reno*, 71 F. Supp. 2d 402, 414 (D.N.J. 1999) ("The [legacy Immigration and Naturalization Service ("INS")] procedures patently failed the *Mathews* test of constitutional sufficiency. And the court finds this failure to be sufficient basis to grant the petitioner's writ of habeas corpus and direct his release from custody.").

A. Application of the *Mathews* Factors

54. Although civil immigration detention is authorized by statute, the detention may only serve two legitimate purposes: (1) mitigating flight risk; and (2) preventing danger to the community. *Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

55. 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. *See Velasco Lopez*, 978 F.3d at 851 (applying *Mathews* factors), *see also, J.U.*, 2025 WL 2772765, at *10 (same); *Artiga*, 2025 WL 2829434, at *8 (same). This test requires sufficient process to mitigate the risk of erroneous deprivation of a liberty interest. *Id.*

56. As set forth in *Mathews* , this Court must consider three factors to determine what procedural protections the Constitution requires: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures

used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976); *see also Mata Velasquez*, 794 F. Supp. at 153 (applying *Mathews* test to find that parole revocation without notice likely violated due process).

57. With respect to the first factor, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750; *see also Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 475 (3d Cir. 2015) ("[T]he burden to [a noncitizen's] liberty outweighs a mere presumption that the [noncitizen] will flee and/or is dangerous."). Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial." 978 F.3d at 851–52. This is because "[f]reedom from imprisonment . . . lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also Foucha*, 504 U.S. at 80.

58. Second, there is a high risk of an "erroneous deprivation" of liberty through the current procedures and a significant value to providing notice and a hearing prior to any re-detention. ICE revoked L.R.C.'s release and immediately arrested and detained him without any evidence of individualized review, without setting forth the basis for the revocation and re-detention, and without first providing any hearing or any other form of process. *See, e.g.*, *Artiga*, 2025 WL 2829434, at *9 ("With respect to the second prong of the *Mathews* test, the record demonstrates that no individualized determination was made prior to or contemporaneously with the decision to detain Petitioner in September 2025, and there was no change in circumstances between the time DHS released Petitioner on bond to his re-arrest and detention.").

59. The probative value of procedural safeguards is therefore immense. In *Villiers v. Decker*, 31 F.4th 825 (2d Cir. 2022), the Second Circuit recognized the value of notice and a hearing prior to re-detention by ICE. In looking to *Morrissey*, *Scarpelli,* and additional Supreme Court precedent, the Second Circuit found that "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers*, 31 F.4th at 833.

60. Third, the proposed procedures—namely, that ICE provide notice of intent to revoke release with a pre-deprivation hearing at which the government bears the burden of proof—do not meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Indeed, the government's interest supports notice and a hearing prior to revocation of release and re-detention because the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 855; *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"); *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *5 (S.D.N.Y. Nov. 14, 2025) ("The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as ... there is no evidence in the record suggesting that [Cuy Comes] is a flight risk or a danger to his community.") (internal citations omitted). Additionally, "unnecessary detention imposes substantial societal costs. The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those

ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted); *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024) ("Where the noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is 'separate[ ] families and remove[ ] from the community breadwinners, caregivers, parents, siblings and employees.'" (internal citations omitted). In this case, Respondents would not have been prejudiced by providing notice and a hearing to justify the proposed bond revocation and re-detention for L.R.C., someone who had been complying with ICE requirements and is seeking relief in full immigration removal proceedings.

61. Respondents violated L.R.C.'s right to due process and immediate release is the appropriate remedy, with an order preventing re-detention until and unless Respondents provide notice and the opportunity to respond to any intent to re-detain. *See Chipantiza-Sisalema v. Francis*, 25-CV-5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (ordering the immediate release of a petitioner re-detained by ICE because her sudden re-detention violated her right to due process); *Valdez*, 2025 WL 1707737 at *4 (ordering the release of petitioner re-detained after an immigration court hearing and concluding that "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."); *Artiga*, 2025 WL 2829434, at *9 (granting the habeas petition, ordering the transfer of petitioner back to the jurisdiction and ordering his release from custody).

II. Petitioner is Not Subject to Mandatory Detention Because He is Detained Under 8 U.S.C. § 1226(a).

A. L.R.C. Is Not An Individual "Seeking Admission;" The INA's Mandatory Detention Provisions Do Not Apply.

62. As discussed above, Respondent's re-detention of LRC violates due process. Respondents also lack authority to detain L.R.C. pursuant to 8 U.S.C. § 1225(b). Respondents continued detention of L.R.C. thus violates the plain language of the INA, whose mandatory detention provision applies only to individuals "seeking admission"—not individuals such as L.R.C., who have already entered the country and are residing here.

63. Because Respondents lack authority to detain L.R.C. pursuant to 8 U.S.C. § 1225(b), this Court should order his immediate release—or, at the minimum, an immediate bond hearing.

64. Individuals like L.R.C.—who were released on recognizance and are already present within the country at the time of ICE arrest and detention—have consistently been processed under 8 U.S.C. § 1226(a), which permits release on bond or parole. ICE, however, refuses to release L.R.C. from custody, relying on a new ICE policy, "Interim Guidance Regarding Detention Authority for Applications for Admission," *see* Ex. L, instructing ICE officers to treat all individuals deemed inadmissible as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), rendering them ineligible for bond consideration. The BIA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), similarly reversed decades of agency practice and precedent and erroneously concluded that all individuals who entered the United States fall under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A), rather than § 1226(a), and are ineligible to be released on bond, *id.*

65. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

66. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally

entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes that are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

67. Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission at or near the border referred to under § 1225(b)(2). Unlike § 1226, § 1225(b)(2) is limited to individuals who are detained while actively "arriving" in the United States and "seeking admission" and are not clearly and beyond a doubt entitled to be admitted.

68. Lastly, the INA also provides for detention of noncitizens who have already been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

69. Petitioner's case concerns detention provisions under the first two categories: (1) § 1226(a) and (2) § 1225(b)(2).

70. Sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), to provide for detention of those previously convicted of certain crimes.

71. Section 1226 provides the general process for arresting and detaining noncitizens who are present in the United States and eligible for removal. *See J.U.*, 2025 WL 2772765, at *5. It prescribes that "[t]he Attorney General may issue a warrant for the arrest and detention of a[]

[noncitizen][6] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Except as provided in § 1226(c), "the Attorney General 'may release' a[] [noncitizen] detained under § 1226(a) 'on . . . bond' or 'conditional parole.'" *Id.* (quoting § 1226(a)(1)–(2).

72. Under this default rule, "[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Lopez Benitez*, 2025 WL 2371588, at *3. If the noncitizen objects to the initial determination, they "may request a bond hearing before an IJ at any time before a removal order becomes final." *Id.* (citing 8 C.F.R. § 1236.1(d)(1)). Decisions by an IJ may be appealed to the BIA. *J.M.P. v. Arteta*, No. 25 CIV. 4987 (DEH), 2025 WL 2984913, at *10 (S.D.N.Y. Oct. 23, 2025); *Hernandez v. Sessions*, 872 F.3d 976, 983 (9th Cir. 2017) (citing § 236.1(d)(3)).

73. Section 1225(b), in contrast, "supplement[s] § 1226's detention scheme." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022). It applies to noncitizens seeking entry into the United States and, "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 for a proceeding under section 1229a of this title." § 1225(b)(2)(A).

74. For decades following the enactment of the INA, individuals who entered the United States without inspection and placed in standard removal proceedings were routinely afforded bond hearings unless their criminal history rendered them subject to mandatory detention under 8 U.S.C. § 1226(c). This practice was consistent with longstanding agency interpretation,

[6] This petition uses the term "noncitizen" as equivalent to the statutory term "alien." *See*, e.g., *Santos-Zacaria v. Garland*, 598 U.S. 411, 414 n.1 (2023) (*citing Nasrallah v. Barr*, 590 U. S. 573, 578 n. 2 (2020)) (slip op., at 4, n.2).

which distinguished between "arriving" noncitizens and those already present in the interior of the country.[7] Noncitizens not classified as "arriving" were entitled to custody hearings before an IJ. *See* 8 U.S.C. § 1252(a) (1996); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

75. On July 8, 2025, ICE, in coordination with DOJ, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. *See* Ex. L.[8] The new policy, titled "Interim Guidance Regarding Detention Authority for Applications for Admission," claims that all noncitizens who entered the country without inspection shall now be subject to the mandatory detention provision of § 1225(b)(2)(A). *Id.*

76. On September 5, 2025, the BIA endorsed this policy shift in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A). IJs are now unable to conduct individualized bond hearings for the hundreds of detainees, many who have been living peacefully in the country for years.

77. Respondents' position contradicts decades of settled precedent. Until now, Respondents consistently adhered to the distinction between § 1226(a) and § 1225(b)(2). *See, e.g.*, *Matter of Garcia-Garcia*, 25 I&N, Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N., Dec. 572 (A.G.

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[7] Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a). *See* Ex. O at 13 (Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) ***will be eligible for bond and bond redetermination***[.]") (emphasis added).

[8] Also accessible at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited 11/25/25)

2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

78. Respondents' interpretation not only reverses decades of agency practice but defies the plain language of the INA. Because "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law," *Jennings*, 583 U.S. at 287 (quoting § 1225(a)(3)), "[t]he idea that a different detention scheme would apply to noncitizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system," *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. August 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 US at 289, [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a)").

79. Section 1226 leaves no doubt that it applies to people who face charges, in removal proceedings, of being inadmissible to the United States, including those who are present without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E) (discussing noncitizens who are subject to the statute when deemed inadmissible under paragraph (6)(A), (6)(C), or (7) of § 1182(a)). "Put simply, § 1226 'generally governs the process of arresting and detaining' [noncitizens] 'once inside the United States' 'pending their removal.'" *J.G.O.*, 2025 WL 3040142, at *4 (*quoting Jennings*, 583 U.S. at 288).

80. Section 1225(b), by contrast, applies to people arriving at ports of entry or who are apprehended while arriving near the border. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

81. Section 1225(b)'s "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238 at *6; *see also Matter of M-D-C-V-*, 28 I. & N., Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit[.]"); *US v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."); *but see, Ferreira Candido v. Bondi*, 25-cv-867(JLS) (W.D.N.Y., December 4, 2025) (concluding that "applicant for admission" and "seeking admission" are synonymous).. The word "seeking" is a present participle, which "is used to signal present and continuing action." *See Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *2 (S.D.N.Y. Oct. 28, 2025) (quoting *Progressive Tense*, MERRIAM WEBSTER ONLINE, https://www.merriam-webster.com/dictionary/progressive%20tense (last visited October 27, 2025) ("[S]eeking' is written in the present-progressive tense, which 'is used to refer to an action or a state that is continuing to happen.") The plain language of § 1225 thus applies only to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

82. Respondents' interpretation of § 1225(b)(2)(A) would also impermissibly render superfluous part of Congress's recent amendment to § 1226(c) in the Laken Riley Act. "When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)). The Laken Riley Act created a new category of noncitizens subject to mandatory detention under § 1226(c), namely any noncitizen who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of [8 U.S.C. § 1182(a)]" and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" certain crimes. Laken Riley Act, Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). One of these inadmissibility grounds—8 U.S.C. § 1182(a)(6)(A)(i) –covers noncitizens "present in the United States without being admitted or paroled." Yet if all noncitizens present without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) regardless of criminal history, "there would have been no need for Congress to specify in [the Laken Riley Act] that such noncitizens are subject to mandatory detention" under § 1226(c) when they met certain criminal conduct criteria. *See Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *8 (D. Mass. Oct. 3, 2025); *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)); *J.G.O*, 2025 WL 3040142, at *4 ("In early 2025, Congress amended the statute . . . That portion of the amendment would have had no legal effect under the government's reading. . ."); *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 ("[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

83. Courts in the Eastern District of New York have followed the nationwide majority in holding that a proper statutory interpretation results in the application of § 1226(a) to Petitioner's detention. *See Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (finding that the petitioner "effected entry" by being released from custody for several years and therefore was "already in the country" and subject to discretionary detention under § 1226(a)) ("Respondents' construction of § 1225(b)(2)(A) disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with Supreme Court's prior statutory interpretations."); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) ("Indeed, in the approximately two and one-half-months since Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected Respondents' novel and illogical interpretation of the INA.").

84. Notably, the facts of the present case are almost identical to *J.U. v. Maldonado*, where the court granted habeas relief and released the petitioner from custody. No. 25-CV-04836 (OEM), 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025). The petitioner in *J.U.* was a "Venezuelan national who fled his home country in May 2023 to escape persecution" and, like Petitioner in the present case, the petitioner in *J.U.* had been previously released under his own recognizance. *Id.* at *1. Based on this, the court noted that "release on recognizance constitutes a form of conditional parole from detention housed in the provisions of § 1226's discretionary detention". *Id.* at *6. As such, the court held that the petitioner may only be subject to detection as a matter of discretion under § 1226(a). *Id.* at *9.

85. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like L.R.C., who have already entered and are residing in the United States at the time they are detained by ICE.[9] The applicable statute of detention is 8 U.S.C. § 1226(a).

III. L.R.C. Has Been Detained In Violation of Due Process for 6 Months And His Immediate Release Must Be Ordered Or, Alternatively, A Bond Hearing Where the Respondents Bear the Burden of Proof By Clear and Convincing Evidence.

86. L.R.C. has been detained for six months. In that time, he has never received a bond hearing before an IJ. For the reasons set forth above, L.R.C.'s re-detention was inconsistent with constitutional due process protections, and the Court should order his immediate release. But even if Respondents had discretion to detain L.R.C. in June 2025, L.R.C.'s continued detention cannot be justified now, in light of L.R.C.'s prolonged detention of nearly six months with no bond hearing before an IJ and no clear end in sight. *See Velasco Lopez*, 978 F.3d 842 at 854 (finding that individuals subject to prolonged detention under § 1226(a) must be afforded process *in addition to* that provided by an ordinary bail hearing).

87. Here, L.R.C. has been detained for nearly six months without an initial bond hearing before an IJ and without any individualized review, and his detention is nowhere near its end. Indeed, L.R.C. is still in the initial phases of his removal proceedings, which will continue for many months or even years through merits proceedings and any necessary appeals. Respondents have categorically refused to provide L.R.C. with the bare minimum—an initial bond hearing

[9] This Court can also consider that Respondents lacks authority to detain L.R.C. under the mandatory detention provision of § 1225(b)(2)(A) because L.R.C. is a member of the class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), and his continued detention under the mandatory detention provision of § 1225(b)(2)(A) is contrary to the Order granting class wide relief issued in that case. However, L.R.C. nonetheless maintains his individualized claims for due process and relief as raised in this petition.

before an IJ – and L.R.C. has already detained for nearly 6 months and counting, such that heightened procedural protections are required.

88. "The longer the duration of incarceration, the greater the deprivation" an individual suffers. *Velasco Lopez*, 978 F.3d at 852. Accordingly, "as the period of confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 853 (citing *Zadvydas*, 533 U.S. at 701) (internal quotations omitted).

89. The Fifth Amendment entitles noncitizens to the protections of the Due Process Clause. *Id.* at 850 (citing *Reno*, 507 U.S. at 306). "[T]he Due Process Clause applies to all 'persons' within the United States," including noncitizens, "whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693.

90. Heeding the requirements of the Due Process Clause, "[t]he Supreme Court has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed the clear and convincing standard for various types of civil detention." *Velasco Lopez*, 978 F.3d at 855 (collecting cases).

91. Accordingly, there is an "'overwhelming consensus' of courts in this Circuit that have held that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden to justify continued detention of a noncitizen who is detained pursuant to § 1226(a), even absent 'prolonged detention.'" *Banegas v. Decker*, No. 21-cv-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. June 7, 2021) (quoting *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021)); *see also Lopez Cano v. Decker*, No. 22-cv-7428 (AKH), 2022 WL 17584156, at *3 (S.D.N.Y. Dec. 12, 2022) (finding that the right to a "procedurally proper bond hearing does not depend on the length of a petitioner's detention");

Aparicio Jimenez v. Decker, No. 21-cv-880 (VSB), 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (declining the government's invitation to interpret *Velasco Lopez* as holding that the agency's burden allocation is unconstitutional *only* when detention has become prolonged); *J.C.G. v. Genalo*, No. 1:24-cv-08755 (JLR), 2025 WL 88831, at *9 (S.D.N.Y. Jan. 14, 2025) (same).

92. In *Velasco Lopez*, the Second Circuit affirmed the "important constitutional limitations" on the government's power to detain noncitizens pending removal proceedings pursuant to § 1226(a). 978 F.3d at 855. The Court reached its conclusion – requiring the burden of proof on the government to establish the necessity of continued detention by clear and convincing evidence – by conducting a ground-up procedural due process analysis, using the three-factor balancing test laid out by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. at 335; *see Velasco Lopez*, 978 F.3d at 851, 855. The Second Circuit cautioned that "detention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded," *id.* at 852, and recognized the Supreme Court's emphasis in *Demore v. Kim* that removal proceedings should be short, highlighting that Mr. Velasco Lopez's detention had far exceeded the average length of detention under contemplated in *Demore*—1.5 months, *id.* (*citing Demore v. Kim*, 538 U.S. at 529); *see also Hernandez-Lara v. Lyons*, 10 F.4th at 35–39 (following the reasoning in *Velasco Lopez* and holding that due process requires the burden be placed on the government to prove dangerousness and flight risk for any petitioner detained under § 1226(a)).

93. The court found the agency's bond procedures to be constitutionally inadequate for Mr. Velasco Lopez, who had been detained for over fourteen months. *See Velasco Lopez*, 978 F.3d at 853. The proper remedy, the Second Circuit held, was a new bond hearing at which the government bore the burden of justifying continued detention by a clear and convincing standard of evidence. *Id.* at 855–56.

94. Although the Court in *Velasco Lopez* did not reach the question of whether the government must *always* bear the burden of proof at bond hearings held under 8 U.S.C. § 1226(a), *id.* at 855 n.13, its analysis under *Mathews* makes clear that such protections are owed all persons seeking release under § 1226(a), regardless of the length of detention, or especially in this case where L.R.C. has been detained for six months and will continue without any individualized review. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 35-39 (1st Cir. 2021) (following the reasoning in *Velasco Lopez* and holding that due process requires the burden be placed on the government to prove dangerousness and flight risk for any petitioner detained under § 1226(a)); *J.I.T. v. Almodovar*, No. 1:25-cv-06749-MMG (S.D.N.Y. November 26, 2025)(following *Velasco Lopez* and applying *Mathews* factors to determine that habeas filed at six months of detention, and detained nine months at time of adjudication, was sufficiently prolonged to require burden shifted bond hearing.)

95. The individual circumstances of L.R.C.'s case, under an application of the *Mathews* factors, overwhelmingly favor heightened procedural protections in the form of a bond hearing where the government bears the burden of proof by clear and convincing evidence.

96. First, the private interest affected by government action "is 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)). As the *Velasco Lopez* court recognized, "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." 978 F.3d at 851 (citing *Jones v. U.S.*, 463 U.S. 354, 361 (1984)). Importantly, at MDC, L.R.C. is "not 'detained,'" but rather "incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes." 978 F.3d at 850; *see also Chavez-Alvarez v. Warden*

York Cty. Prison, 783 F.3d 469, 478 (3d Cir. 2015) ("[M]erely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures."(citing *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997))), *overruled on other grounds by Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

97. Second, there is a high risk of an "erroneous deprivation" of liberty through the current procedures and a significant value to providing notice and a hearing. The procedure afforded to L.R.C.—"absolutely none," *Valdez*, 2025 WL 1707737, at 4—"seriously impact" L.R.C.'s ability to secure bond or release. *See also*, *Velasco Lopez*, 978 F.3d at 852. Given the absence of other key safeguards, requiring Respondents to do the bare minimum in providing L.R.C. with a constitutionally adequate bond hearing before an IJ is essential. *Id.* at 852–54 (noting, upon considering the risk of erroneous denial under current bond procedural framework, that the second *Mathews* factor "weighs heavily" in the noncitizen's favor).

98. Third, the proposed procedure—namely, that L.R.C. receive a bond hearing where the Respondents bear the burden of proof by clear and convincing evidence —does not meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. To the contrary, the government has *no* interest in detaining noncitizens who are neither dangerous nor a flight risk but does have an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 852; *Black*, 103 F.4th at 154; *see also Aparicio-Villatoro v. Barr*, No. 6:19-cv-06294-MAT, 2019 WL 3859013, at *6 (W.D.N.Y. Aug. 16, 2019) ("[T]he Court cannot discern any legitimate government interest, beyond administrative convenience, in detaining noncitizens generally while their immigration proceedings are pending and no final removal order has been issue[d].")

99. L.R.C.'s due process and statutory rights were violated by Respondents' detention of L.R.C. without individualized review and failure to provide L.R.C. with a bond hearing before an IJ. To remedy this violation, the Court should grant L.R.C.'s request for immediate release. *See, e.g.*, *Rojas*, 2025 WL 3034183, at *8 ("The Court has determined that the Government violated Petitioner's procedural due process rights under the Constitution, and he is therefore entitled to release."); *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("[T]he traditional function of the writ is to secure release from illegal custody"; it is the "usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it."). In the alternative, L.R.C. must be granted a constitutionally adequate bond hearing at which the government bears the burden of proof by clear and convincing evidence in light of his prolonged detention without a bond hearing. *See Velasco Lopez*, 978 F.3d at 852; *Black v. Decker*, 103 F.4th 133, 151–52, 157–58 (2d Cir. 2024) (concluding that seven months was sufficiently lengthy to warrant heightened protections against arbitrary detention, including a bond hearing where ICE had to bear the burden by clear and convincing evidence, in the mandatory detention context); *see also Raspoutny v. Decker*, 708 F.Supp.3d 371 (S.D.N.Y. Dec. 22, 2023) (finding that a burden shifted bond hearing is warranted in the § 1226(a) context after seven months of detention).

A. Due Process Requires that the Government Analyze L.R.C.'s Ability to Pay and Alternative Means of Assuring Appearance When Assessing Flight Risk and Setting a Bond Amount

100. To comply with due process, an adjudicator must evaluate L.R.C.'s ability to pay and any alternative means of assuring his appearance when assessing flight risk and setting a bond amount.

101. Immigration detention must bear "reasonable relation to the purpose for which the individual [was detained]." *Zadvydas*, 533 U.S. at 690. The government's only legitimate interests

here are in "ensuring the appearance of [noncitizens] at future immigration proceedings" and "[p]reventing danger to the community." *Id.* If a certain bond amount or some less-restrictive alternative condition could vindicate the government's interest in appearance at future immigration proceedings, then to continue to incarcerate an individual regardless is a needless deprivation of that individual's liberty.

102. Furthermore, failure to consider ability to pay when setting a bond amount, "creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Black*, 103 F.4th at 158. An IJ's purpose when setting a specific bond amount is to produce a sufficient incentive for the detainee to appear at future proceedings. *Hernandez*, 872 F.3d at 991. This calculation must depend in part on the noncitizen's financial circumstances, as the amount of bond needed to disincentivize flight for an indigent individual is less than that for a wealthy individual. *Id.*

103. Whether due process requires consideration of ability to pay and alternatives to detention was absent from the Second Circuit's decision in *Velasco Lopez* only because the issue was not addressed by the court below. *See generally* Corrected Br. for Pet'r, *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Velasco Lopez*, 978 F.3d 842; *Velasco Lopez v. Decker,* No. 19-cv-2912 (ALC), 2019 WL 2655806 (S.D.N.Y. May 15, 2019). However, the Second Circuit recently held in *Black* that the district court had properly required the IJ to consider the noncitizen's ability to pay and alternatives to detention during a constitutionally-mandated bond hearing. 103 F.4th at 158. The court employed the *Mathews* three-factor balancing test and was guided by the touchstone that detention must be reasonably related to a legitimate government interest. *Id.* Although Black was detained under INA § 236(c), the court's reasoning under the *Mathews* test applies with equal force to noncitizens like L.R.C. detained under INA § 236(a).

104. Although *Black* did not settle whether an adjudicator must always consider ability to pay and alternatives to detention, the decision is consistent with the emerging consensus in this Circuit that due process categorically requires IJs to consider these factors in any immigration bond hearing. *See e.g., Quintanilla*, 2021 WL 707062, at *4; *Hernandez-Aviles v. Decker*, No. 20-cv-7636 (ER), 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020) (collecting cases). At least one court of appeals has reached the same conclusion. *See Hernandez*, 872 F. 3d at 991-94. These decisions recognize that a "bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests." *Id.* at 991.

105. To adequately vindicate L.R.C.'s constitutional due process rights, at a bond hearing an adjudicator must be required to analyze the mitigative impact of alternative conditions of release and ability to pay when considering danger and flight risk, as well as L.R.C.'s ability to pay in setting a bond amount.

CLAIMS FOR RELIEF

COUNT I
Violation of Due Process:
Re-Detention

106. L.R.C. realleges and incorporates by reference the paragraphs above.

107. The June 2025 revocation of release and re-detention by ICE caused L.R.C. to be separated from his community and placed in a carceral setting. His re-detention infringed upon a liberty interest that cannot be revoked without adequate due process under the Fifth Amendment to the U.S. Constitution. *See Ceesay*, 2025 WL 1284720, at *13 ("[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.").

108. Under a *Mathews* analysis, notice of an intent to revoke bond and conditions of release and a hearing before a neutral arbitrator was required before Respondents could incarcerate L.R.C. in ICE detention.

109. Respondents violated L.R.C.'s due process rights under the Fifth Amendment to the U.S. Constitution by detaining him after he was released on bond and conditions of release without providing adequate procedural protections to ensure that the bond revocation and re-detention serve a valid governmental purpose. *See* U.S. Const. Amend. V; *see also Morrissey*, 408 U.S. at 471 (holding that parole may not be revoked without the minimum due process protections of written notice of the alleged violations, disclosure of adverse evidence, opportunity to present defense evidence and confront witnesses, hearing before a neutral adjudicator, and written statement of fact findings).

110. The Court should find revocation of L.R.C.'s conditions of release and his re-detention absent notice or a pre-deprivation hearing violates due process.

COUNT II
Violation of Due Process:
Detention Without Individualized Review

111. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

112. The government may not deprive a 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 that the Clause protects." *Zadvydas*, 533 U.S. at 690.

113. Petitioner has a fundamental interest in liberty and being free from official restraint.

114. Respondents' detention of Petitioner without individualized consideration of whether he is a flight risk or danger to others and without notice or opportunity to respond, violates his right to due process.

COUNT III
Violation of the INA

115. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

116. The mandatory detention provision of § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to Petitioner, who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

117. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

118. The applicable statute of detention is 8 U.S.C. § 1226(a) and Petitioner is entitled to an immediate bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Eastern District of New York while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, 28 USC § 2243;

d. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner;

e. In the alternative, issue an order for Petitioner to receive a bond hearing, before this Court or before an Immigration Judge, pursuant to 8 U.S.C. § 1226(a) within seven days with the burden of proof on the government by clear and convincing evidence and consideration of alternatives to detention and ability to pay bond;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

Dated: December 11, 2025

Respectfully submitted,

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**motion to proceed pro hac vice forthcoming*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of L.R.C.. because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 11, 2025

Respectfully submitted,

/s/Elyssa Williams
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