UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Miguel Angel GOMEZ RODRIGUEZ,

***Petitioner*,**

v.

Raul MALDONADO, JR.,
in his official capacity as Warden of the Metropolitan Detention Center;

Judith ALMODOVAR,
in her official capacity as Acting Director of the New York City Field Office of Immigration and Customs Enforcement;

Kristi NOEM,
in her official capacity as Secretary of Homeland Security;

Pamela BONDI,
in her official capacity as the Attorney General of the United States; and

the U.S. DEPARTMENT OF HOMELAND SECURITY.

***Respondents*.**

Civil Action No. 1:26-cv-00464

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

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Miguel Angel Gomez Rodriguez ("Mr. Gomez Rodriguez" or "Petitioner") is a citizen of Ecuador who entered the United States seeking protection from persecution [redacted] which he and his family endured. Prior to his detention, Petitioner was learning English, working at a furniture store, and helping his mother financially. Petitioner entered the United States in February 2024 and was briefly detained by the Department of Homeland Security ("DHS") before being released on his own recognizance for humanitarian reasons. He was not subject to DHS' Alternatives to Detention ("ATD") or any other form of supervision but was served with a Notice to Appear ("NTA") in immigration court and instruction to attend all immigration court hearings. He did just that. Petitioner appeared as required at his initial immigration court hearing and timely filed his application for asylum and related relief. Nevertheless, on June 17, 2025, Petitioner was abruptly and unexpectedly detained by Immigration and Customs Enforcement ("ICE") agents during his second scheduled master calendar hearing on his asylum application in immigration court. He had been living in New York State for more than one year at the time of his arrest and is currently unlawfully detained at the Metropolitan Detention Center ("MDC" or the "Facility").

2. Petitioner has been unlawfully detained for over seven months because, prior to commencement of representation by the undersigned counsel, he lacked access to counsel to help him challenge his unlawful detention. Petitioner's detention deprives him of liberty without any

opportunity for an immigration judge to conduct an individualized assessment of whether his continued confinement is justified, as required by 8 U.S.C. § 1226(a). Petitioner has never been arrested and has no criminal convictions. Despite his prior release and the absence of any changed circumstances, he has been re-detained without notice, without an opportunity to be heard, and without any neutral evaluation of flight risk or danger.

3. Respondents justify Petitioner's detention by relying on a recent precedential decision from the Board of Immigration Appeals ("BIA"), which incorrectly holds that immigration judges lack authority to consider bond requests for *any* person who entered the United States without admission, reasoning that detention occurs under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This interpretation, which contravenes decades of prior case law, has been soundly rejected by more than 300 federal courts around the country.

4. That interpretation violates the plain language of the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. Section 1225(b)(2)(A) does not apply to individuals like Mr. Gomez Rodriguez, who previously entered the United States and were residing here prior to re-detention. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which authorizes release on recognizance or bond following an individual determination[1]. Moreover, Mr. Gomez Rodriguez's re-detention—following an individualized decision to release him and in the absence of any material change in facts related to flight risk,

[1] Mr. Gomez Rodriguez is a member of the certified class in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).

danger, or statutory custody authority—violates both his procedural and substantive due process rights.

5. Accordingly, Petitioner respectfully requests that this Court order his immediate release from custody, or in the alternative, conduct a prompt bond hearing.

PARTIES

6. Petitioner Miguel Angel Gomez Rodriguez is a citizen of Ecuador who is currently detained in immigration custody at the Metropolitan Detention Center in Brooklyn, New York. He has been in immigration detention since June 17, 2025. Following his arrest at the New York Broadway Immigration Court, ICE did not set bond, and Petitioner is unable to obtain a review of his custody by an IJ, pursuant to the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

7. Respondent Raul Maldonado, Jr. is employed as Warden of the Metropolitan Detention Center in Brooklyn, New York, where Petitioner is detained. In this capacity, he serves as the immediate legal and physical custodian of Mr. Gomez Rodriguez. He is named in his official capacity.

8. Respondent Judith Almodovar is the Acting Director of the New York Field Office of Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO"), a component of the Department of Homeland Security ("DHS"). In this capacity, Respondent Almodovar is a legal custodian of Mr. Gomez Rodriguez and is responsible for Petitioner's detention and removal. She is named in her official capacity.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees U.S. Immigration and Customs Enforcement, the component agency of

DHS that is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

10. Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, she oversees the Department of Justice, which includes the Executive Office for Immigration Review and the immigration court system it operates. She is sued in her official capacity.

11. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

JURISDICTION

12. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

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

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

VENUE

15. Venue is proper in this district because Mr. Gomez Rodriguez is currently detained in this District. 28 U.S.C. § 2241(a); *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

16. Venue is also 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 this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There is no statutory requirement that a noncitizen exhaust administrative remedies before challenging the lawfulness of immigration detention under 28 U.S.C. § 2241. Because

Congress has not imposed such a requirement, exhaustion in this context is prudential, not jurisdictional. *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)

18. When determining whether to require prudential exhaustion, courts consider the urgency and context of detention. Immigration habeas cases implicate a fundamental liberty interest, where "the need for collateral review is most pressing." *Beharry*, 329 F.3d at 62 (citing *Able v. United States*, 88 F.3d 1280 (2d Cir. 1996)).

19. The Second Circuit has long recognized exceptions to prudential exhaustion. It may be excused when: 1) available remedies provide no genuine opportunity for adequate relief; 2) irreparable injury may occur without immediate judicial review; 3) administrative appeal would be futile; or 4) the petitioner raises a substantial constitutional question. *Beharry*, 329 F.3d at 62; *Araujo-Cortes*, 35 F. Supp. 3d at 538-39.

20. Each exception applies here. The Board of Immigration Appeal's published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holds that individuals detained under 8 U.S.C. § 1225(b)(2)(A) are categorically ineligible for bond. Immigration judges are bound by that ruling, *see* 8 C.F.R. § 1003.1(g)(1), rendering any administrative appeal futile. Courts in this Circuit have recently excused exhaustion on that exact basis. *See Padilla Molina v. Deleon*, No. 2:25-cv-06526 (E.D.N.Y. Dec. 23, 2025) ("Given the BIA's policy of upholding mandatory detention . . . there are no administrative remedies available that could provide Petitioner with the relief he seeks."); *Crespo Tacuri v. Genalo*, No. 1:25-cv-06896 (E.D.N.Y. Jan. 6, 2026) (rejecting *Hurtado*'s interpretation of § 1225(b)(2)(A) and granting habeas relief without requiring exhaustion).

21. Further, the BIA lacks jurisdiction to adjudicate constitutional issues, making exhaustion unnecessary where a petitioner raises a due-process claim. *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002); *Araujo-Cortes*, 35 F. Supp. 3d at 541. Courts in this Circuit have repeatedly waived exhaustion in such cases. *J.U. v. Maldonado*, No. 1:25-cv-04836 (E.D.N.Y. Sept. 29, 2025) (excusing exhaustion for a petitioner detained under *Hurtado* where constitutional claims could not be addressed administratively).

REQUIREMENTS OF 28 U.S.C. § 2243

22. 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.*

23. 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).

LEGAL FRAMEWORK

The INA's Custody Statutes

24. The INA describes three detention authorities that pertain to the majority of detained noncitizens in removal proceedings.

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a; *see also Jennings v. Rodriguez*,

583 U.S. 281, 288 (2018) ("Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen] 'pending a decision on whether the [noncitizen] is to be removed . . . [and] [e]xcept as provided in [1226(c)],' the Attorney General 'may release' [a noncitizen] detained under § 1226(a) 'on … bond'"). Individuals detained under § 1226(a) are entitled to an initial individualized custody determination by ICE. 8 C.F.R. § 236.1(d)(1) (authorizing DHS to make custody and bond determinations 'pending a decision on whether the [individual] is to be removed from the United States'). Thereafter, if a noncitizen detained under § 1226(a) is dissatisfied by ICE's determination, they are entitled to a bond hearing before an immigration judge. 8 C.F.R. §§ 1003.19(a), 1236.1(d). In contrast, noncitizens in standard removal proceedings before an immigration judge who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. 8 U.S.C. § 1226(c).

26. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals who are "seeking admission," described under § 1225(b)(2).

27. Lastly, the INA also provides for detention of noncitizens who have a final administrative order of removal, including individuals in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

28. This case centers on a dispute as to which detention provisions applies to the Petitioner: § 1226(a) or § 1225(b)(2). These provisions at § 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 in early 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

29. Following the enactment of the IIRIRA thirty years ago, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* 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).

30. As a result, for nearly 30 years, most people who entered without inspection and were placed in removal proceedings—like the Petitioner here—received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of practice prior to IIRIRA's enactment, during which time noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *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 the prior § 1252(a)).

DHS and DOJ's Abrupt Policy Change on Bond Eligibility

31. On July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claimed that all persons who

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

entered the United States without inspection were now subject to no-bond detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

32. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

33. Since Respondents adopted these new policies, federal courts have overwhelmingly rejected their new interpretation of the INA's detention authorities, including within the jurisdiction of the Second Circuit. *See Yao v. Almodovar*, No. 25-cv-9982, 2025 WL 3653433 (S.D.N.Y. Dec. 17, 2025); *Y-C- v. Genalo*, No. 25-cv-06558, 2025 WL 3653496 (E.D.N.Y. Dec. 17, 2025); *Campbell v. Almodovar*, No. 25-cv-9509, 2025 WL 3538351 (S.D.N.Y. Dec. 10, 2025); *Rivera Esperanza v. Francis*, No. 1:25-cv-08727, 2025 WL 3513983 (S.D.N.Y. Dec. 8, 2025); *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *Liu v. Almodovar*, No. 25-cv-9256, 2025 WL 3458633 (S.D.N.Y. Dec. 2, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *McDonald v. Francis*, No. 25-cv-09355, 2025 WL 3295906 (S.D.N.Y. Nov. 26, 2025); *Huang v. Almodovar*, No. 25 Civ. 9346 (DEH), 2025 WL 3295912 (S.D.N.Y. Nov. 26, 2025); *Barco Mercado v. Francis*, No. 1:25-cv-6582, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025); *O.F.B. v. Maldonado*, No. 25-cv-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025); *Sun v. Almodovar*, No. 25-cv-9262, 2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025); *Villegas v. Francis*, No. 25-cv-9199, 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025); *Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025); *Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014 (S.D.N.Y.

Nov. 4, 2025); *Gonzalez v. Joyce*, No. 25-cv-8250, 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Lopez Benitez,* No. 25 Civ. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493 (LJV), 2025 WL 1953796 (W.D.N.Y. July 16, 2025).

34. Similarly, dozens of district courts in other circuits around the country have rejected this interpretation. *See, e.g., Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (citing over 20 district court decisions rejecting the government's position); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (collecting 20 cases in note 8 and accompanying discussion); *see also Hyppolite*, 2025 WL 2829511, at *12 (noting that the government conceded at oral argument that they were not "aware of *any* Article III court that had adopted their interpretation" of the statute).

35. Courts have rejected DHS's and DOJ's new interpretation because it defies the plain text of the INA. *See Padilla Molina v. Deleon*, No. 2:25-cv-06526 (E.D.N.Y. Dec. 23, 2025) (holding that "§ 1226, not § 1225, governs detention of noncitizens already present in the United States" and rejecting Respondents' interpretation as "inconsistent with the plain text and overall structure of the INA").

36. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.SC. § 1226(a). These removal

hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a(a)(1).

37. The text of § 1226 explicitly applies to people charged as being inadmissible, including those—like the Petitioner—who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a), unless, unlike the Petitioner here, they have been charged, arrested, or convicted of certain crimes. As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025).

38. As district courts have found, the statutory bars to a bond hearing for inadmissible noncitizens with specific types of criminal history would all be rendered surplusage if in fact, *no* inadmissible noncitizens were eligible for bond. *See Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *10.

39. In contrast, § 1225(b) applies to people who—unlike Petitioner here—are continued in detention after arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). *See Rivera Zumba*, 2025 WL 2753496, at *8. 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.

40. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Gomez Rodriguez, who have already entered and were residing in the United States at the time they were arrested.

Detention Without Individualized Review

41. DHS officers must make an individualized determination of all persons detained under 8 U.S.C. § 1226(a) that takes into consideration whether the person (1) is a "danger to property or persons" and (2) is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

42. Likewise, when government action affects an individual liberty interest, the Due Process Clause of the Fifth Amendment requires consideration of (1) the private interest to be affected, (2) the risk of erroneous deprivation of the procedures used, and (3) the government's interests, including the burden of any additional procedural safeguards imposed. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Accordingly, courts have held that re-detention absent an individualized determination as to flight risk and dangerousness violates due process. *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *13-15 (holding that ICE's arrest of a noncitizen at his immigration court hearing without an individualized determination of danger and flight risk violated his procedural due process rights); *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (holding that ICE's re-detention of the petitioner at her immigration court hearing after she had previously been released on recognizance violated her procedural due process rights); *cf. Arias Gudino v. Lowe*, 785 F.Supp.3d 27, 44-46 (M.D. Pa. 2025) (finding re-detention without notice likely violated procedural due process under *Mathews*).

43. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

44. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

45. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to

noncitizens with no criminal record whatsoever who have lived in the community for years. The broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of preventing danger to the community or flight risk and violates substantive due process.

46. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (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." *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth C'ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA's interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

47. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional import.").

For people "who can face years of detention before resolution of their immigration proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

48. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial," observing that the petitioner, "could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to maintain her employment." 10 F.4th at 28.

49. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. *See, e.g.*, *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at *8 (D. Minn. May 21, 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because "the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention"). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

50. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for individuals like Petitioner does not outweigh the liberty interest at stake. To

the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Limiting detention to circumstances where the government can demonstrate danger or flight risk "may save the government, and therefore the public, from expending substantial resources on needless detention." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (2d Cir. 2021). That interest is especially diminished where, as here, detention occurs without meaningful process. The Second Circuit has long held that when ICE seeks to revoke or impose custody, due process requires at minimum "notice of the alleged grounds . . . a hearing, and the right to testify." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022); *see also Roba v. United States*, 604 F.2d 215, 219 (2d Cir. 1979) (remanding for evidentiary hearing where deprivation of liberty occurred without adequate process). Consistent with that principle, courts within this Circuit have found post-deprivation bond hearings constitutionally inadequate where the government failed to provide a reasoned justification or an opportunity to be heard before re-detention. *See Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065, 2025 WL 3314420, at *31-32 (E.D.N.Y. Nov. 28, 2025); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 154 (W.D.N.Y. 2025)

51. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 ("[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof."). "A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision." *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-*

Sanchez v. Warden York C'ty Prison, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

Remedies in Immigration Habeas Petitions

52. The "flexible nature" of habeas relief affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *See Rivera Zumba*, 2025 WL 2753496, at *11; *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). The most appropriate remedy for an individual who was previously released to the community is release on recognizance, without the use of alternatives to detention or other conditions. *See Zumba,* 2025 WL 2753496, at *11 (ordering release and enjoining respondents from re-arresting petitioner under § 1225(b)); *Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493 (LJV), 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Hyppolite*, 2025 WL 2829511, at *17 (same).

53. In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Mr. Gomez Rodriguez must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight).

FACTUAL BACKGROUND

54. Mr. Gomez Rodriguez is a 26-year-old citizen of Ecuador who has lived in New York state since entering the United States in February 2024. He entered the United States to seek protection from persecution he had previously endured. Before his detention, he lived with his mother in Poughkeepsie, New York, supported his household, and was learning English while working to meet the eligibility requirements to join the United States military.

55. Upon his entry into the United States, Mr. Gomez Rodriguez was detained by immigration authorities and charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i). Following an individualized assessment, he was almost immediately released on his own recognizance for humanitarian reasons. He was not placed on Alternatives to Detention ("ATD") supervision, was not required to report to Immigration and Customs Enforcement ("ICE"), and was instructed only to attend all scheduled immigration court hearings.

56. Mr. Gomez Rodriguez complied fully with the conditions of his release. He appeared at this initial master calendar hearing on June 11, 2024, at which he was directed to submit an asylum application and his proceedings were adjourned to June 17, 2025. A few days later, in June 2024, he timely filed an asylum application. He attempted to secure legal representation but was unable to afford private counsel.

57. On June 17, 2025, Mr. Gomez Rodriguez appeared for his scheduled second master calendar hearing in immigration court at the New York – Broadway Immigration Court. At that hearing, DHS filed an oral motion to dismiss the proceedings. The immigration judge granted the motion, dismissing his case. Mr. Gomez Rodriguez reserved his right to appeal the dismissal and had until July 16, 2025, to file an appeal with the Board of Immigration Appeals. Respondent, thereafter, submitted his appeal with the BIA and its currently pending.

58. Immediately after leaving the courtroom, he was surrounded and detained by ICE officers. He was provided no prior notice of his re-detention and was not informed of the basis for his arrest. ICE did not allege that Mr. Gomez Rodriguez had violated any conditions of his release, engaged in criminal conduct, or presented a danger or flight risk. Upon information and belief, no individualized custody determination was made at that time.

59. Mr. Gomez Rodriguez was taken into ICE custody and subsequently transferred to the Metropolitan Detention Center ("MDC") in Brooklyn, New York, where he has remained continuously detained for over seven months, since June 17, 2025.

60. Upon his re-detention, Petitioner was in possession of personal and legal materials, including identification documents, immigration paperwork, and other records necessary to assist counsel in preparing the case. These materials were seized by DHS at the time of Petitioner's arrest and have not been returned. The seizure and continued retention of these documents have frustrated Petitioner's ability to communicate effectively with counsel and have impeded undersigned counsel's ability to diligently represent him.

61. Based on ICE's general practice and it, and the immigration courts abrupt change in legal interpretation, it is clear that ICE has classified him as subject to mandatory detention. As a result, he has been categorically denied any opportunity for an individualized custody hearing before an immigration judge.

62. Mr. Gomez Rodriguez has been in ICE custody for over 213 days without explanation. Diagnosed with tuberculosis three months ago, his mental health is deteriorating due to unlawful detention and the threat of return to Ecuador, where he faced persecution. Although officially held in civil immigration detention, his being held in conditions similar to those of individuals in criminal custody, including being detained in a facility for individuals awaiting trial or serving

sentences, required to wear a jumpsuit, allowed limited recreation, and subjected to repeated lockdowns from Friday noon to Monday noon.

63. Mr. Gomez Rodriguez's detention is civil in nature and is not tied to any criminal conviction or sentence. His removal is not imminent, as his immigration case remains pending before the BIA and could remain pending for years.

64. Since his initial release from custody on his own recognizance, there has been no material change in the facts related to flight risk, danger to the community, or eligibility for relief. Mr. Gomez Rodriguez has no criminal convictions and has never been alleged to pose a risk to public safety. The procedural developments in his immigration case, including the dismissal of the proceedings and the pendency of the appeal, do not constitute changed circumstances that justify renewed detention without individualized review.

CAMPAIGN OF DETENTIONS

65. On or about May 20, 2025, Respondents began a nationwide campaign to detain people attending their immigration court hearings. Initially, this was tied to motions to dismiss removal proceedings for people present in the United States for less than two years, predicated on Respondents' intention to place them in expedited removal proceedings rather than full removal proceedings. After such a motion was filed, and regardless of the outcome, Respondents would detain individuals immediately after their appearance in immigration court. The detention campaign expanded, targeting even people for whom no motion to dismiss was filed or who are not eligible for expedited removal. These detentions, too, lack any individualized basis.

66. In New York City, this campaign led to a large number of detentions in all three Manhattan immigration courthouses. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every

single one, even in the face of protests, such as that the person has minor children or medical conditions or cannot lawfully be subject to expedited removal.

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

68. Mr. Gomez Rodriguez was among those arrested after his court hearing and detained at 26 Federal Plaza. He spent a few days there, crammed into a room with up to 50 people, pleading with DHS officers for toilet paper.

CLAIMS FOR RELIEF

COUNT I
Violation of the Immigration and Nationality Act

69. Petitioner incorporates by reference the allegations in the preceding paragraphs.

70. The mandatory detention provision at 8 U.S.C. § 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 those who previously entered the country and have been residing in the United States, such as Mr. Gomez Rodriguez.

71. The fact that Mr. Gomez Rodriguez was previously detained and released at the border on his own recognizance does not undermine this conclusion. First, Mr. Gomez Rodriguez was released on his own recognizance at the border pursuant to 8 U.S.C. § 1226, not paroled pursuant to 8 U.S.C. § 212(d)(5). *See Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023) (describing this distinction). Therefore, he was never treated as an "arriving alien" or subject to

the "entry fiction" that comes with parole, "whereby noncitizens are physically permitted to enter the country but are nonetheless treated for legal purposes as if stopped at the border." *Diaz Martinez*, 2025 WL 2084238, at *3 (quoting *Dep't of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 139 (2020)). Therefore, the procedural history of Mr. Gomez Rodriguez's case shows that it is distinguishable from *Matter of Q. Li* and falls squarely within the scope of 8 U.S.C. § 1226(a). *Diaz Martinez*, 2025 WL 2084238, at *4; *Gomes*, 2025 WL 1869299, at *8; *accord Rosado*, 2025 WL 2337099, at *6.

72. In any event, that initial arrest "is not what is at issue in this case," rather it is his 2025 arrest and detention. *See Lopez Benitez*, 2025 WL 2371588. Even if Mr. Gomez Rodriguez was "seeking admission" within the meaning of § 1252(b)(2)(A) at the time of his entry and initial apprehension, he was no longer engaged in that "present-tense action" when he was arrested at the Broadway Immigration Court on June 17, 2025, and therefore no longer meets the requirements of § 1252(b)(2)(A) discussed above. *See Diaz Martinez*, 2025 WL 2084238, at *6.

73. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without review and violates the INA. Petitioner is properly detained under 8 U.S.C. § 1226(a) and thus has been unlawfully held in mandatory detention.

COUNT II
Violation of the Bond Regulations

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

75. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present

without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

76. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

77. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Fifth Amendment: Violation of Procedural Due Process

78. Petitioner incorporates by reference the allegations in the preceding paragraphs.

79. 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 v. Davis*, 533 U.S. 678, 690 (2001). In determining what process is due before the government may deprive a person of liberty, courts apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which weighs 1) the private interest affected, 2) the risk of erroneous deprivation and the value of additional safeguards, and 3) the goverments interest.

80. Mr. Gomez Rodriguez has a fundamental interest in liberty and being free from official restraint. The government's sudden re-detention of Petitioner without pre-deprivation notice, without an opportunity to be heard, and without a hearing before a neutral adjudicator to

determine whether he is a flight risk or danger, fails the *Mathews* test and violates his right to procedural due process.

COUNT IV
Fifth Amendment: Violation of Substantive Due Process

81. Petitioner incorporates by reference the allegations in the preceding paragraphs.

82. Immigration detention is civil, not punitive, and must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has stated that the purpose or civil detention in this context is to "ensur[e] the appearance of aliens at future proceedings," *Zadvydas*, 533 U.S. at 690, and to prevent flight, *Demore*, 538 U.S. at 528.

83. Mr. Gomez Rodriguez's detention serves none of the purposes of civil immigration detention. Respondents previously determined, correctly, that he posed no flight risk or danger and could be released to the community with no bond or significant conditions of supervision. With no change in circumstances, Respondents arbitrarily detained Mr. Gomez Rodriguez, subjecting him to jail-like conditions and significant hardship. This abrupt deprivation of liberty violates substantive due process.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Eastern District of New York while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner a restore him to his previous release on his own recognizance, without conditions of supervision or alternatives to detention; or, in the alternative, provide Petitioner with a bond hearing within seven days at which the government bears the burden to justify that his continued detention is necessary by clear and convincing evidence;
5. Declare that Petitioner's detention is unlawful;
6. 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
7. Grant any other and further relief that this Court deems just and proper.

Dated: New York, NY
January 27, 2026

Respectfully submitted,

/s/ Scott Foletta
Scott Foletta
Neighborhood Defender Service of Harlem
317 Lenox Avenue, 10th Floor
New York, NY 10027
Tel: (929) 244-3456
sfoletta@ndsny.org

/s/ Pierina Reyes
Pierina Reyes
Neighborhood Defender Service of Harlem
317 Lenox Avenue, 10th Floor
New York, NY 10027
Tel: (646)937-0361
preyes@ndsny.org
**Application for admission pro hac vice forthcoming*

/s/ Jill Applegate
Jill Applegate
Neighborhood Defender Service of Harlem

317 Lenox Avenue, 10th Floor
New York, NY 10027
Tel: (917) 890-7172
japplegate@ndsny.org
**Application for reciprocity admission from the Southern District of New York forthcoming*

/s/ Jorge Guerreiro
Jorge Guerreiro
Neighborhood Defender Service of Harlem
317 Lenox Avenue, 10th Floor
New York, NY 10027
Tel: (201) 580-6817
jguerreiro@ndsny.org
**Application for admission pro hac vice forthcoming*

Counsels for Petitioner

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

I represent Petitioner, Miguel Angel Gomez Rodriguez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 27, 2026

Respectfully submitted,

/s/ Scott Foletta

Scott Foletta
Neighborhood Defender Service of Harlem
317 Lenox Avenue, 10th Floor
New York, NY 10027
Tel: (929) 244-3456
sfoletta@ndsny.org

TABLE OF EXHIBITS

Exhibit 1: I-213 (Record of Deportable/Inadmissible Alien)
Exhibit 2: I-862 (Notice to Appear)