UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Elvis Geovanni DIAZ-ESQUIBEL *Petitioner,* v. LaDeon FRANCIS, New York Field Office Director for U.S. Immigration and Customs Enforcement; Heriberto Tellez, Warden of Metropolitan Detention Center (MDC) Brooklyn; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, *Respondents.*	Civil Action No. _____ PETITION FOR WRIT OF HABEAS CORPUS

Petitioner brings this petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner alleges in support of his petition:

PRELIMINARY STATEMENT

1. Petitioner Elvis Geovanni DIAZ-ESQUIBEL is in the physical custody of Respondents at the Metropolitan Detention Center, Brooklyn ("MDC Brooklyn."). Mr. Diaz-Esquibel entered the United States in October 2023, and was swiftly released by Respondents on his own recognizance as neither a risk of flight nor a danger to the community. He lived at liberty for more than two years while his immigration case remained pending. But on January 4, 2026, during a routine ICE "Check In" he was summarily detained. Nothing Mr. Diaz-Esquibel did precipitated his detention. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have improperly concluded that he is subject to mandatory detention.

2. Petitioner is alleged to have, *inter alia*, entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Mr. Diaz-Esquibel's removal proceedings, DHS denied him release from immigration custody on January 4, 2026. His detention was based on a new DHS policy, issued on July 8, 2025, instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone allegedly inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United States without admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible to be released on bond. That new DHS policy is a stark departure from decades of DHS actions releasing individuals who, as alleged against Mr. Diaz-Esquibel, entered the United States without admission or inspection, but are neither a risk of flight nor a danger to the community.

4. Relief from detention is unavailable to Mr. Diaz-Esquibel through the immigration court system. A writ of *habeas corpus* is his only means to secure his release. On September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Mr. Diaz-Esquibel's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like him who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond based on an individualize determination upon arrest. That statute expressly applies to people who, like Mr. Diaz-Esquibel, are allegedly inadmissible for having entered the United States without inspection.

6. Mr. Diaz-Esquibel's confinement is unlawful—as confirmed by a cascade of *habeas corpus* decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release. Mr. Diaz-Esquibel also asks this Court to enjoin his transfer outside this District. *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 2:25-cv-1963 (MEF) (D.N.J.) Mar. 19, 2025), ECF No. 81 (enjoining transfer and removal of an immigration *habeas* petitioner under the All Writs Act). Alternatively, Mr. Diaz-Esquibel respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243

on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his immediate release.

PARTIES

7. Petitioner Elvis Geovanni DIAZ-ESQUIBEL is alleged to be a citizen of Guatemala who has been in immigration detention since January 4, 2026. Mr. Diaz-Esquibel is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

8. Respondent LADEON FRANCIS is named in his official capacity as the Field Office Director for ICE's New York Field Office. He is responsible for the administration of immigration laws, and the execution of detention warrants and removal orders.

9. Respondent HERIBERTO TELLEZ is named in his official capacity as the Warden of the MDC Brooklyn

10. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the Department of Justice.

11. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE.

12. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION AND VENUE

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

14. The federal district courts have jurisdiction to hear *habeas corpus* claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Mr. Diaz-Esquibel is incarcerated at the MDC Brooklyn, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

16. Mr. Diaz-Esquibel is not required to exhaust administrative remedies because doing so would be futile.

17. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

18. Such exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

19. Mr. Diaz-Esquibel's case meets every requirement. He will face irreparable injury if his detention continues—every day that he is wrongly detained is a day in which he has irreparably lost his liberty. His petition raises substantial constitutional questions. And intervening events have rendered administrative appeal futile, and unable to provide a genuine opportunity for adequate relief.

20. On September 5, 2025, the Board decided *Matter of Yajure Hurtado*, a precedential decision, that effectively forecloses bond for Mr. Diaz-Esquibel through the immigration court system. *Matter of Yajure Hurtado* found that all noncitizens who, like Mr. Diaz-Esquibel, have not been admitted to the United States, are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. *See* 29 I. & N. Dec. 216 (BIA 2025). Thus, the BIA will be bound to find that Mr. Diaz-Esquibel is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release. This is true although the overwhelming majority of Article III district courts in the country that have heard a challenge to this reading of the statute has unequivocally rejected Respondents' argument.

STATEMENT OF FACTS

A. Procedural History: Mr. Diaz-Esquibel's Immigration Case

21. Mr. Diaz-Esquibel has resided in the United States since approximately October 3, 2023, and has lived in Bronx, New York.

22. Mr. Diaz-Esquibel entered the United States on or about October 3, 2023, intending to seek asylum. He was detained by DHS at or near Eagle Pass, Texas.

23. Two days later, on October 5, 2023, Mr. Diaz-Esquibel was released on his own recognizance, and served with a Notice to Appear by immigration authorities. At that time, DHS placed him in removal proceedings, ordering him to appear before the Immigration Court at 26 Federal Plaza, New York, NY on October 3, 2024 pursuant to 8 U.S.C. § 1229a. ICE has alleged that Mr. Diaz-Esquibel is, *inter alia*, inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

24. Mr. Diaz-Esquibel lived in the United States without incident for over two years while his immigration case was pending. Throughout that time, he remained intent on applying for asylum, and was able to submit his I-589 Application for Asylum and for Withholding of Removal on November 18, 2025.

Mr. Diaz-Esquibel was then scheduled to appear for a hearing in his immigration case on January 15, 2026.

25. Days prior to the scheduled hearing, however, Mr. Diaz-Esquibel was called for an ICE "Check In" on Sunday January 4, 2026. He dutifully attended the meeting at 26 Federal Plaza, New York, NY 10278, where he was summarily arrested by immigration authorities. There are no allegations that Mr. Diaz-Esquibel did anything to violate his release conditions, or to otherwise precipitate his arrest. Mr. Diaz-Esquibel has been in custody for the last month, and is now detained at the MDC Brooklyn.

26. Following Mr. Diaz-Esquibel's detention, his immigration hearing was canceled on January 7, 2026. No new hearing date has been scheduled.

B. Mr. Diaz-Esquibel Should Be Released: Respondents Determined Years Ago That He Posed Neither a Risk of Flight Nor a Danger to the Community

27. Respondents initially released Mr. Diaz-Esquibel on his own recognizance just days after he entered the United Stated in October 2023. At that time, Respondents necessarily determined that he is neither a flight risk nor a danger to the community. And they were right. He has no convictions, and no criminal arrests in the United States—or in any other country.

28. Nothing has occurred to warrant Mr. Diaz-Esquibel's detention in the interim. He has lived in the United States since 2023, and has had no contact with law enforcement, other than his immigration proceedings. His track record living in the United States only confirms that his release remains warranted.

29. He also has a strong support system here in the United States. Mr. Diaz-Esquibel has been represented in his immigration proceedings by the non-profit organization Advocacy of Queens County, which is committed to his well-being in the United States. Prior to his detention, Mr. Diaz-Esquibel has consistently had secure housing, food, as well as medical and mental health services. He received treatment for his HIV, and mental health counseling to overcome the trauma as a result of the discrimination he faced in his home country as a result of his sexual orientation. This support has provided

Mr. Diaz-Esquibel with the stability necessary to build a stable life here, while his immigration case is adjudicated.

30. Mr. Diaz-Esquibel's willing and consistent participation with immigration proceedings is a further indication that he poses no flight risk. He has complied with his ICE "Call In" notices without incident, and seeks to present his *bonafide* asylum case in court when given the opportunity. Indeed, when Mr. Diaz-Esquibel received a "Call In" notice from ICE asking that he attend a "Check In" at 26 Federal Plaza, New York, NY 10278 on Sunday, January 4, 2026, he dutifully attended—although it has become common knowledge that such "Check Ins" now frequently result in immediate detention. And Mr. Diaz-Esquibel was in fact detained on January 4, 2026.

31. Plainly Mr. Diaz-Esquibel has every incentive to continue to appear for all of his hearings–particularly as he has a viable path to relief from removal. Living as a fugitive will give him nothing. Mr. Diaz-Esquibel poses no risk of flight based on the foregoing, and is not a danger to the community.

32. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is nonetheless unable to consider Mr. Diaz-Esquibel's bond request.

33. As a result, Mr. Diaz-Esquibel remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his community, from his support system, and precluding him from productively contributing to society while his immigration case is adjudicated.

LEGAL ARGUMENT

A. Immigration Detention Legal Framework

34. The INA prescribes three basic forms of detention that may be applicable for the vast majority of noncitizens in removal proceedings.

35. 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), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

36. 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 seeking admission referred to under § 1225(b)(2).

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

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. Detention under Section 1226(a) is discretionary, not mandatory. The government "may release the [noncitizen] on—(A) 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)(2)(A)–(B).20.

40. Under the § 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-CV-5937,2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal

proceedings, the individual may move for a bond redetermination hearing before the immigration judge. *See* 8 C.F.R. §1003.19.

41. In contrast to § 1226, which applies to "certain [noncitizens] ***already in the country***," *Jennings*, 583 U.S. at 289 (emphasis added), § 1225(b) governs detention of noncitizens ***seeking entry*** into the United States (*i.e.*, "applicants for admission"). In other words, § 1225(b) mandates detention for those noncitizens not already present in the United States, and subject to that statute; that limited subset of immigrants are not eligible to be considered for release.

42. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

43. For decades after the enactment of the detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection, but who were already in the United States, like Mr. Diaz-Esquibel, at the time of an ICE arrest were detained under § 1226(a)—not § 1225(b)(2). They could thus seek release on bond through immigration proceedings. *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). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 287-89.

B. Respondents' New Detention Policy is Contrary to the Plain Language of the Statutes, And Incongruous With Decades of Practice

44. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy[1] that rejected the well-established understanding of the statutory framework, and reversed decades of practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended. This new policy affects people who have resided in the United States for months, years, and even decades.

45. On September 5, 2025, the BIA adopted this same position in a precedential decision, *Matter of Yajure Hurtado*. 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.

46. Since Respondents adopted their new policy, almost every district court that has confronted this issue "has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez*, 2025 WL 2782499, at *1 (collecting 22 recent cases finding against the government's interpretation);[2] *see also*

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

[2] *See, e.g., Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz*, 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-CV-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (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); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*,

Hyppolite v. Noem, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same).

47. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. The government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is (1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

48. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-] current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain,

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2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogllo Chafla v. Scott*, 2:25-CV-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25- CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "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." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

49. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States, like Mr. Diaz-Esquibel, generally fall within § 1226 for detention purposes. Therefore, unless subject to bars not applicable here, they are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

50. The LRA amendments to § 1226 that occurred just this year, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely

new provision in order to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

51. Mr. Diaz-Esquibel was arrested after two years and three months of continuous presence in the United States, not while "seeking admission." Further, his pending asylum application is not legally considered a process of "seeking admission." *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 n.7 (S.D.N.Y. Aug. 13, 2025); *Garcia-Mendez v. Lynch*, 788 F.3d. 1058 (9th Cir. 2015).

52. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Diaz-Esquibel, who have already entered and were residing in the United States at the time they were apprehended. His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of Respondents' statutory authority and *ultra vires*.

C. Noncitizens Possess Procedural Due Process Rights

53. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

54. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

55. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot

change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

56. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

D. Mr. Diaz-Esquibel's Constitutional Due Process And Statutory Rights Require An Individualized Bond Determination

57. Because Mr. Diaz-Esquibel possesses due process rights, and the procedural rights conferred by Section 1226(a) and the implementing regulations—his status as a non-citizen is irrelevant in that regard—a decision to detain a him requires an individualized determination regarding whether he poses a risk of flight, or a danger to the community. *See Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

58. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

59. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

60. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous—and here there is none—when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, No. 25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

61. Recent decisions by federal courts throughout the country confirm that due process requires the government to make individualized determinations to detain noncitizens, and give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation.

62. That violation is particularly egregious where, as here, the government has already made determination that a petitioner is not a flight risk or a danger, and no change of circumstance justifies re-detention. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge

would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

63. As a result, courts have ordered noncitizens, like Mr. Diaz-Esquibel, immediately released where their pre-detention due process rights have been violated. This Court should do the same.

E. Mr. Diaz-Esquibel Is Entitled to Release on Bond: He is Neither a Flight Risk Nor a Danger to the Community

64. Here, immediate release is warranted for Mr. Diaz-Esquibel because Respondents have not—and cannot—show that they conducted an individualized determination before his summary arrest at his ICE "Check In" on January 4, 2026. Mr. Diaz-Esquibel was previously released on his own recognizance pursuant to 8 C.F.R. § 1236.1(c)(8), reflecting ICE's determination that he did not pose a flight risk or danger to the community. At the time of re-detention, ICE failed to identify any change in circumstances or any new information that would justify depriving Mr. Diaz-Esquibel of his liberty. ICE officers, in their Form I-213 dated January 4, 2026, stated only that he is subject to be re-detained now that "bedspace is available." Administrative convenience, resource allocation, or detention capacity are not legitimate bases for civil detention under the Fifth Amendment; they do not constitute an individualized determination as to Mr. Diaz-Esquibel's entitlement to release; they have no impact on whether he presents a flight risk or a danger to the community. *See Velasco Lopez*, 978 F.3d at 852 (government bears the burden of justifying detention with evidence related to flight risk or danger); *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *10 (S.D.N.Y. May 23, 2018) (detention must be justified by individualized findings, not generalized or administrative concerns).

65. Mr. Diaz-Esquibel has lived in the United States for over two years without incident. Nothing in his conduct or profile had changed to precipitate his detention last month. There is simply no

individualized justification available for his summary detention now, requiring his release. *See Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

66. Respondents' reliance on § 1225(b)(2)'s mandatory detention provision establishes their decision to forgo any evaluation of whether Mr. Diaz-Esquibel's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the United States.

67. In the alternative, Petitioner seeks, at a minimum, a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) AND IMPLEMENTING REGULATIONS

68. Petitioner realleges and incorporates by reference each and every allegation contained above.

69. Because Petitioner is not "seeking admission," he is not lawfully detained under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is ultra vires and not lawful.

70. Rather, the proper statutory interpretation of the INA, consistent with decades of practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a).

71. Petitioner's detention is thus *ultra vires*, and his immediate release is warranted.

SECOND CAUSE OF ACTION:

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES PROCEDURAL AND SUBSTANTIVE DUE PROCESS, U.S. CONST. AMEND. V

72. Petitioner realleges and incorporates by reference each and every allegation contained above.

73. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether or not to detain him. However, because ICE arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2), the agency necessarily failed to exercise its discretion.

74. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the procedural and substantive process that he was due, violating the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

THIRD CAUSE OF ACTION:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a), AND IMPLEMENTING REGULATIONS

75. Petitioner realleges and incorporates by reference each and every allegation contained above.

76. Upon information and belief, Respondents are currently detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), its mandatory detention authority.

77. However, Petitioner was, at the time of his arrest and detention by Respondents, not seeking admission to the United States. He was already residing in the United States. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

78. Because Petitioner detention should be governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b), to Petitioner is unlawful under the Immigration and Nationality Act.

FOURTH CAUSE OF ACTION:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

79. Petitioner realleges and incorporates by reference each and every allegation contained above.

80. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2)(A).

81. On information and belief, no individualized assessment of flight risk was conducted for petitioner and Respondent's failed to articulate any finding that Petitioner posed a flight risk, a danger to the community, or that any material change in circumstances had occurred since Petitioner's prior release.

82. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

83. Respondents' decision to re-detain Petitioner at a routine ICE check-in, after previously releasing him on his own recognizance pursuant to 8 C.F.R. § 1236.1(c)(8) was arbitrary and capricious because Respondents' failed to make an individualized assessment, and it was made without any material changes to Petitioner's circumstances.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[3]

3. Issue a writ of *habeas corpus* directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, and enjoining any re-detention for at least seven days after release;

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

   a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;

   b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and

   c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.

5. Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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[3] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 1:25-cv-1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9. *See also* Order, *Ozturk v. Hyde*, No. 25-cv-374 at 68 (WKS) (D.Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

6. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: February 3, 2026
New York, NY

/s/ IH
Ilana Haramati
MEISTER SEELIG & FEIN PLLC

Pro Bono Counsel for Petitioner Elvis Geovanni Diaz-Esquibel