UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

John TACURI YUMBLA,

Petitioner,

v.

Raul MALDONADO JR., *in his official capacity as* Warden, Metropolitan Detention Center; Judith ALMODOVAR, *in her official capacity as* Acting New York Field Office Director for U.S. Immigration and Customs Enforcement; Pamela BONDI, *in her official capacity as* Attorney General of the United States; Kristi NOEM, *in her official capacity as* Secretary of Homeland Security; and Todd M. LYONS, *in his official capacity* as Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner John Leandro Tacuri Yumbla ("Mr. Tacuri Yumbla"), an asylum seeker, seeks immediate relief for Respondents' unlawful mandatory detention under an immigration statute that does not apply to him. Mr. Tacuri Yumbla is one of thousands of noncitizens seeking lawful status who have been detained by ICE as they went about their day and who now find themselves unlawfully subjected to mandatory detention under 8 U.S.C. § 1225(b)(2). In fact, Mr. Tacuri Yumbla, as someone arrested by ICE in the interior of the country following an initial release on his own recognizance, is subject to the discretionary detention statute, 8 U.S.C. § 1226(a). That statute requires an individualized determination of danger or flight risk before detention and allows for release or a bond hearing before an immigration judge, due process rights he has summarily been denied.

2. Mr. Tacuri Yumbla came into ICE custody as the grave result of a discriminatory sting operation by Amtrak police that has targeted people, including Mr. Tacuri Yumbla, perceived to be LGBTQ in New York's Pennsylvania Station—part of a long history of discriminatory arrests in the station's public bathrooms. On December 24, 2025, Amtrak police officers baselessly detained Mr. Tacuri Yumbla while he was using the bathroom on the way home from work. When they finished questioning him, instead of releasing him, they transferred him to ICE custody. Ex. A, Declaration of John Leandro Tacuri Yumbla ("Tacuri Yumbla Decl."), ¶¶ 3-15.

3. Mr. Tacuri Yumbla has complied with all the terms of his release at the border. ICE engaged in no individualized process to determine whether he should be jailed and has detained him at Metropolitan Detention Center ("MDC") in Brooklyn, New York,

since approximately December 29, 2025, without providing him a bond hearing. *Id.* ¶16; *see also* Ex. B, Declaration of Noor Sheikh, Esq. ("Sheikh Decl."), ¶ 8. Furthermore, ICE arrested Mr. Tacuri Yumbla without the administrative warrant required by 8 U.S.C. 1226(a) and without the showing of probable cause that the INA and the Fourth Amendment separately require for a warrantless arrest.

4. The overwhelming majority of district courts in the Second Circuit have held that Respondents' interpretation of the mandatory detention statutes is wrong and have ordered petitioners' immediate release. *See, e.g.*, *Flores-Linares v. Bondi*, No. 26 Civ. 298 (SJB), 2026 WL 179208, at *5 (E.D.N.Y. Jan. 22, 2026) ("Court after court, judge after judge, in district after district has rejected this argument."); *Crespo Tacuri v. Genalo*, No. 25 Civ. 6896 (NCM), 2026 WL 35569, at *3 (E.D.N.Y. Jan. 6, 2026) ("The judges that have considered this issue within the Eastern District of New York in the last four months have unanimously rejected the government's interpretation."); *Padilla Molina v. Deleon*, No. 25 Civ. 6526 (JMA), 2025 WL 3718728, at *3 (E.D.N.Y. Dec. 23, 2025) ("[T]he Court joins the hundreds of district court decisions that have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA.") (citations omitted).[1] This overwhelming consensus reflects the

[1] *See also e.g.*, *Singh v. Maldonado*, No. 26 Civ. 119 (OEM), 2026 WL 233216, at *8, *10 (E.D.N.Y. Jan. 29, 2026); *Minarcaja Concha v. Lyons*, No. 2:25 Civ. 6695 (NJC), 2025 WL 215417, at *13, *19 (E.D.N.Y. Jan. 28, 2026); *Covelli-Chaparro v. Bondi*, No. 2:26 Civ. 118 (NJC), 2026 WL 118842, at *6-7 (E.D.N.Y. Jan. 15, 2026); *I za by Iza v. Larocco*, No. 2:25 Civ. 6915 (NJC), 2026 WL 31378, at *13, *16 (E.D.N.Y. Jan. 5, 2026); *Galeas Miranda v. Maldonado*, No. 25 Civ. 6882 (PKC), 2026 WL 25405, at *2, *2 n.1 (E.D.N.Y. Jan. 5, 2026); *Arizmendi v. Noem*, No. 25 Civ. 7056 (NRM), 2025 WL 3723960, at *1–2 (E.D.N.Y. Dec. 24, 2025); *Padilla Molina v. DeLeon*, No. 25 Civ. 06526 (JMA), 2025 WL 3718728, at *2–5 (E.D.N.Y. Dec. 23, 2025); *Ulloa Montoya v. Bondi*, No. 25 Civ. 06363, 2025 WL 3718694, at *3–6 (E.D.N.Y. Dec. 23, 2025) (JMA); *Pesantez Castro v. Maldonado*, No. 25 Civ. 06844, 2025 WL 3723966, at *1–2 (E.D.N.Y. Dec. 23, 2025) (JMA); *Y- C- v. Genalo*, No. 25 Civ. 06558 (NCM), 2025 WL 3653496, at *3–5, *8 (E.D.N.Y. Dec. 17, 2025); *Ye v. Maldonado*, No. 25 Civ. 06417 (AMD), 2025 WL 3521298, at *3–6, *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25 Civ. 6065 (NJC), 2025 WL 3314420, at *21, *33 (E.D.N.Y. Nov. 28, 2025); *O.F.B. v. Maldonado*, No. 25 Civ. 6336, 2025 WL 3277677 (HG), at *3–5, *8 (E.D.N.Y. Nov. 25, 2025); *Sarmiento Guerrero v. Noem*, No. 25 Civ. 05881 (EK), 2025

depth of Respondents' misreading of the INA and of their disregard for the constitutional and statutory rights of noncitizens in the United States.

5. Petitioner seeks the same relief as courts in this district have regularly granted: immediate release from detention. He 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); *see also Perez y Perez v. Noem*, 25 Civ. 4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

6. In light of the severe violations of his constitutional and statutory rights, Mr. Tacuri Yumbla brings this petition pursuant to the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1225(b)(2)(A), 1226(a), and 1357(a)(2); the Due Process Clause, U.S. Const. am. V; the Fourth Amendment, U.S. Const. am. IV; and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), seeking his immediate release.

WL 3214787, at *3–7 (E.D.N.Y. Nov. 18, 2025); *Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *7–12, *16 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4–9 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *4–10 (E.D.N.Y. Sept. 29, 2025); *see also, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–91, 499 (S.D.N.Y. 2025); *Yao v. Almodovar*, No. 25 Civ. 9982 (PAE), 2025 WL 3653433, at *4–10, *12 (S.D.N.Y. Dec. 17, 2025); *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), 2025 WL 3295903, at *4, *13 (S.D.N.Y. Nov. 26, 2025) (noting that the issue of whether all noncitizens who entered the United States without authorization "*must be detained* until their removal proceedings are completed [] has been challenged in at least 362 cases in federal district courts," and "[t]he challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States").

PARTIES

7. Petitioner John Yacuri Tumbla is a citizen of Ecuador and resident of New Jersey who has been in Respondents' unlawful detention since December 24, 2025. Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

8. Respondent Raul Maldonado Jr. is named in his official capacity as the Warden of the Metropolitan Detention Center ("MDC") in Brooklyn, New York. He is responsible for the day-to-day control of Petitioner's custody and for Petitioner's care while in Respondents' custody.

9. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director for ICE's New York Field Office. She is responsible for the administration of immigration laws and the execution of detention warrants and removal orders within the jurisdiction of the New York Field Office.

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, including the BIA and EOIR.

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 challenge 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. Petitioner is incarcerated at the Metropolitan Detention Center 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. Petitioner 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. Petitioner's case meets every requirement. Not only does he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but administrative appeal is manifestly 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 finding that all noncitizens who, like Petitioner, 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. 29 I. & N. Dec. 216 (BIA 2025). Moreover, on January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing immigration judges to continue to follow *Yajure Hurtado*. *See Practice Alert: EOIR Issues Nationwide Guidance on* Maldonado Bautista, Am. Immigr. Laws. Ass'n (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista. Thus, the BIA will be bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny him release. This is true although the overwhelming majority of district courts in the country that have heard a challenge to this reading of the statute has rejected it out of hand.

21. Accordingly, numerous courts have found that exhaustion is excused in immigration habeas petitions in analogous postures. *See, e.g.*, *Tumba v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014, at *8 (S.D.N.Y. Nov. 4, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 497; *Artiga*, 2025 WL 2829434, at *3–4; *J.U.*, 2025 WL 2772765, at *4; *Alvarez Puga v. Ass't Field Off. Dir.*, No. 25 Civ. 24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025).

STATEMENT OF FACTS

22. Mr. Tacuri Yumbla came to the United States to seek asylum in May 2024. Sheik Decl., ¶¶ 4-5. After crossing the border without inspection, Customs and Border Patrol ("CBP") briefly detained him and released him on his own recognizance. *Id.* ¶4.

23. As the records related to his release show, CBP released him pursuant to authority under 8 U.S.C. § 1226(a). *See* Ex. C., Order on Release on Recognizance. In order to release him, the agency was required by regulation to determine that Mr. Tacuri Yumbla did not present a danger to the community or a risk of flight. *See* 8 C.F.R. § 1236.1(c)(8); *accord Minarcaja Concha*, No. 2:25 Civ. 6695 (NJC), 2026 WL 215417, at *18 (E.D.N.Y. Jan. 28, 2026); *Lopez Benitez*, 795 F. Supp. 3d at 496. No material change of circumstances has occurred since that determination.

24. Mr. Tacuri Yumbla timely filed for asylum *pro se* and was pursuing his claim for asylum in immigration court. *Id.* ¶5. Mr. Tacuri Yumbla has no convictions in the United States or anywhere else in the world. *Id.* ¶16.

25. Mr. Tacuri Yumbla settled in Newark, New Jersey and began working as a plumber. *Id.* ¶¶4, 7.

26. ICE scheduled Mr. Tacuri Yumbla for yearly check-ins with its New York Field Office, a requirement with which he complied. Mr. Tacuri Yumbla attended his most recent scheduled check-in in mid-2025 and was given a new reporting date of July 8, 2026. *See* Ex. D., ICE Check-In Receipt. On October 17, 2024, Mr. Tacuri Yumbla attended his first immigration court appearance *pro se*. Sheikh Decl. ¶6. He has since retained Ms. Sheikh and The Bronx Defenders as counsel to represent him in his asylum proceedings. *Id.* ¶2.

27. Respondents took Mr. Tacuri Yumbla into immigration custody following a bizarre and violent encounter with Amtrak police in a Penn Station bathroom on Christmas Eve.

28. On December 24, 2025, Mr. Tacuri Yumbla was transiting through Penn Station in Manhattan, New York on his way home to New Jersey. Tacuri Yumbla Decl., ¶ 2. He entered a public restroom of Penn Station for the purpose of using the bathroom before boarding his train. *Id.* ¶¶ 2-3. In the bathroom, an unknown man asked what Mr. Tacuri Yumbla was looking at and then immediately pushed Mr. Tacuri Yumbla against the wall. *Id.* ¶3.

29. The unknown man left and Mr. Tacuri Yumbla attempted to finish using the bathroom. *Id.* The man returned, looked at Mr. Tacuri Yumbla, and left again. *Id.* When Mr. Tacuri Yumbla left the restroom, the unknown man was waiting for him outside. *Id.* ¶4.

30. Afraid, Mr. Tacuri Yumbla began to run away from him; the man followed. *Id.* Mr. Tacuri Yumbla was then pushed to the ground, temporarily losing consciousness. *Id.* ¶5.

31. Mr. Tacuri Yumbla recalls the man having his foot on his back. *Id.* Mr. Tacuri Yumbla yelled for help. *Id.* The man told him in Spanish that he was "depraved." *Id.* Soon, a uniformed Amtrak police officer arrived. *Id.* ¶6.

32. The officer handcuffed Mr. Tacuri Yumbla and brought him into a room at Penn Station. *Id.* In the room, Mr. Tacuri Yumbla had to remove his shoes, socks, jacket, and scarf; the rest of his belongings were also taken. *Id.* ¶7. The Amtrak officer then briefly questioned him and then left the room. *Id.* ¶7.

33. Mr. Tacuri Yumbla's experiences were consistent with reports of Amtrak Police's campaign of discriminatory "public lewdness" arrests, which have targeted people perceived to be

LGBTQ in Penn Station bathrooms and follow on years of similar conduct from other law enforcement agencies in Penn Station. *See, e.g.*, Press Release, Rep. Jerry Nadler, *Nadler, State Lawmakers Demand Amtrak Police End Discriminatory Arrests at Penn Station* (Sept. 26, 2025), https://nadler.house.gov/news/documentsingle.aspx?DocumentID=397409; Press Release, Legal Aid Soc'y, *Statement on Surge of Public Lewdness Arrests by Amtrak Police in Penn Station Bathrooms Allegedly Targeting LGBTQ+ New Yorkers* (Sept. 20, 2025), https://legalaidnyc.org/wp-content/uploads/2025/09/Statement-on-Surge-of-Public-Lewdness-Arrests-by-Amtrak-Police-in-Penn-Station-Bathrooms-Allegedly-Targeting-LGBTQ-New-Yorkers-.pdf (describing history of public lewdness arrests targeting LGBTQ+ New Yorkers at Penn Station, including legal challenges); *see also* Settlement Agreement, *Holden v. Port Auth. of New York and New Jersey*, No. 17 Civ. 21292 (JGK) (S.D.N.Y. May 31, 2022), ECF No. 281-1 (requiring reforms to Port Authority police practices relating to similar sting operations that resulted in discriminatory arrests for public lewdness). On information and belief, Mr. Tacuri Yumbla was not charged with public lewdness, but was maliciously cited for disorderly conduct, a non-criminal violation under New York law.

34. Mr. Tacuri Yumbla also became ensnared in Respondents' ever-broader and more indiscriminate campaign to subject noncitizens seeking immigration relief to mandatory detention in jail-like conditions and to deprive them of due process. *See, e.g.*, Stephen Miller, White House Deputy Chief of Staff for Policy and United States Homeland Security Advisor (@StephenM), Twitter (Feb. 1, 2026 10:53pm), https://x.com/StephenM/status/2018170822762823946 (stating that "the goal of the US" in subjecting asylum applicants to mandatory detention is "to send aliens home immediately (they get cash and a free plane ticket)" and falsely stating that the facilities where noncitizens are detained "are not prisons."). After an Amtrak officer questioned Mr.

Tacuri Yumbla and left the room, another Amtrak officer entered and informed Mr. Tacuri Yumbla that he would be taken into ICE custody. *Id.* ¶8. Eventually, Mr. Tacuri Yumbla was taken to the street and placed in the back of a car. *Id.* ¶10. He was driven to 26 Federal Plaza in Manhattan. *Id.* ¶¶ 10-12.

35. At 26 Federal Plaza, ICE officers reviewed Mr. Tacuri Yumbla's belongings. Finding a photograph of his nephew on his phone, an officer asked if Mr. Tacuri Yumbla was a "maricón," a slur in Spanish for gay men, *id.* ¶13, further underscoring that he was likely targeted as a perceived LGBTQ person using a Penn Station bathroom. Mr. Tacuri Yumbla spent that evening at Federal Plaza. Over the next few days, he was transferred to multiple ICE detention centers before ultimately being moved to MDC. *Id.* ¶15. During that time, he was unable to call his family or communicate his whereabouts. *Id.* ¶16.

36. Although subject to non-punitive civil detention, Mr. Tacuri Yumbla is detained at MDC, a jail that is well-known for its record of inhumane conditions. *See, e.g.*, *United States v. Coluccci*, 743 F. Supp. 3d 452, 455 (E.D.N.Y. 2024) ("Allegations of inhumane treatment at MDC continue . . . and judges in this district are subject to a steady drumfire of such charges, often uncontested by prosecutors. And these issues continue to affect judicial determinations.") (citations omitted).

37. Mr. Tacuri Yumbla has only one kidney, a condition that requires regular medication and a special diet and has led to diagnoses for chronic kidney disease and unilateral renal agenesis. Sheikh Decl. ¶10. On information and belief, MDC is not meeting Mr. Tacuri Yumbla's medical needs. Following Ms. Sheikh repeated attempts to alert ICE via email of the extreme pain Mr. Tacuri Yumbla was experiencing, he received one session of IV fluid and acetaminophen tablets. *Id.* ¶12. He has not received further treatment. *Id.*

38. On information and belief, at no time did ICE produce an administrative warrant for Mr. Tacuri Yumbla's arrest. Nor did ICE conduct any individualized determination that Mr. Tacuri Yumbla should be arrested and imprisoned.

39. Mr. Tacuri Yumbla has not received a bond hearing. In accordance with *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025), immigration judges will not consider Mr. Tacuri Yumbla's bond request. Instead, it is the government's position that Mr. Tacuri Yumbla is subject to mandatory indefinite detention under 8 U.S.C. § 1225(b)(2)(A), a position roundly rejected by courts in this district and incompatible with the structure and plain meaning of the INA.

40. On January 13, 2026, the Chief Immigration Judge Teresa Riley issued guidance to all immigration judges nationwide instructing them to continue applying *Yajure Hurtado* despite its rejection by Article III courts. Sheikh Decl., ¶15. As such, immigration judges have been directed to deny bond hearings for individuals who entered without inspection. *Id.*

41. As a result, Mr. Tacuri Yumbla remains wrongly imprisoned. Without relief from this Court, he faces "the prospect of weeks, months, or years of detention before [his] case[is] resolved either through a grant of permission to remain in the United States or deportation." Alina Das, *The Law and Lawlessness of U.S. Immigration Detention*, 138 Harv. L. Rev. 1186, 1189 (2025), https://harvardlawreview.org/wp-content/uploads/2025/02/138-Harv.-L.-Rev.-1186.pdf. He will spend this time in a "system has become notorious for unsanitary conditions, inedible food, excessive use of force, racialized abuse, medical neglect, and preventable death." *Id.*; *see also id.* at 1197 n.69 (collecting sources for this assertion).

LEGAL BACKGROUND

A. Mr. Tacuri Yumbla's detention is governed by § 1226(a), and Respondents' assertion of authority to subject him to mandatory detention under § 1225(b)(2)(A) must be rejected.

42. The INA contains two relevant provisions for detaining noncitizens during the pendency of their removal proceedings: 8 U.S.C. §§ 1225 and 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018). Section 1225, which deals generally with procedures for the inspection and expedited removal of noncitizens at or near a port-of-entry, contains a provision—subsection (b)(2)(A)—that imposes mandatory detention without a bond hearing on noncitizens "seeking admission" to the United States. Section 1226, conversely, is the "default" provision authorizing detention of noncitizens who are "already in the country." *Jennings*, 583 U.S. at 288-89 (noting that § 1225 concerns "an alien seeking to enter the country" whereas § 1226 concerns aliens "once inside the United States.").

43. Section 1225(b)(2)(A) states that, "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 [Title 8]." (emphasis added); *see also Jennings*, 583 U.S. at 297 (confirming mandatory nature of detention pursuant to § 1225(b)(2)(A)). The only mechanism to secure release from detention pursuant to § 1225(b)(2)(A) is through the government's exercise of its purely discretionary and unreviewable authority to grant temporary "parole." *See* 8 U.S.C. § 1182(d)(5)(A).

44. By contrast, § 1226(a) states that, "[o]n 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." (emphasis added). Section 1226 and its implementing regulations "require ICE officials to make an individualized custody determination." *Velasaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020). The implementing regulations, for example, delegate authority to DHS officers to grant bond or conditional upon making an individualized determination as to whether a noncitizen subject to § 1226 has "demonstrated . . . 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 also Lopez Benitez*, 795 F. Supp. 3d at 493 (discussing requirement for individualized determination); *Rodriguez-Acurio*, 2025 WL 3314420, at *28 (same).

45. If, after this individualized determination, ICE chooses to continue a noncitizen in custody pursuant to § 1226(a), the noncitizen may ask for a custody redetermination hearing before the immigration judge, a neutral adjudicator, at which the immigration judge may release the noncitizen on bond. 8 C.F.R. §§ 1003.10, 1003.19.

46. For decades after their enactments, the government, respecting the plain meaning of the statutes, applied § 1226—and § 1226 alone—to noncitizens apprehended in the interior of the country. *See, e.g.*, 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).

47. Then, on July 8, 2025, ICE abruptly changed its policy to assert that virtually all noncitizens present in the United States without admission are subject to mandatory detention under § 1225(b)(2)(A). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/ice-

memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (screen captures of memorandum containing interim guidance).

48. On September 5, 2025, the BIA followed suit in a precedential opinion that largely adopted ICE's position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The decision is binding on immigration judges throughout the country.[2]

49. The theory adopted by ICE and by the BIA in *Matter of Yajure Hurtado* has no basis in law. "Respondents' novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with [the] Supreme Court's prior statutory interpretations." J.U., 2025 WL 2772765, at *7; *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Hyppolite*, 2025 WL 2829511, at *12 (holding same and listing cases reaching same conclusion).

50. **Plain meaning.** As an initial matter, Respondents' newly-minted interpretation contradicts the plain meaning of § 1225(b)(2)(A). That statute specifically restricts its application to "aliens seeking admission." While the term is not defined in the INA, it "necessarily implies some sort of present-tense action." *Lopez Benitez*, 795 F. Supp. 3d at 488 (quotation marks and citation omitted). "'[C]ourts have repeated held that the term requires 'some active desire of

[2] While binding on immigration judges, the BIA's interpretations of the INA in administrative decisions "are not entitled to substantial deference." *Hyppolite*, 2025 WL 2829511, *11 (citation omitted). Rather, "[c]ourts must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).
For the reasons laid out in the Petition, the Court should reject any invitation to defer to, or otherwise adopt, the BIA's reasoning in *Yajure Hurtado*. *See, e.g. Hyppolite*, 2025 WL 2829511, at *11 ("[T]he Court respectfully but wholly disagrees with the reasoning of the BIA [in *Yajure Hurtado*].") (citation omitted); *see also J.U.*, 2025 WL 2772765, at *7 (rejecting *Yajure Hurtado*). *Yajure Hurtado* is especially unpersuasive because it departs radically from decades of interpretation and practice. *See, e.g.*, *Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection.").

process toward admission'" as that term is used at 8 U.S.C. § 1101(a)(12)(A), *i.e.*, "the lawful entry of the alien into the United States after inspection and authorization by the immigration officer." *Rodriguez-Acurio*, 2025 WL 3314420, at *22 (quoting *Tumba v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) and citing *Martienz v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)). Under a straightforward reading of the statute, the term does not include noncitizens who "ha[ve] already 'entered' the country (albeit unlawfully)" and who therefore do not "continue[] to be actively 'seeking' such lawful entry at this time." *Lopez Benitez*, 795 F. Supp. 3d at 488. This is so even though someone like Petitioner continues to be "treated as an 'applicant for admission' under various provisions of the statute." *Id.*

51. **Canon against surplusage.** Moreover, "Respondents' position violates the canon of statutory interpretation that 'every clause and word of a statute should have meaning.'" *Hyppolite*, 2025 WL 2829511, at *9; *see also Pulsifer v. United States*, 601 U.S. 124, 129 (2024) ("In a given statute, . . . different terms usually have different meanings."). Congress specified that § 1225(b)(2)(A) applies to a subclass of applicants for admission, namely to noncitizens seeking admission. "If the mandatory detention provision in § 1225(b)(2) applied to *all* noncitizens who are 'applicants for admission,' then there would be no need for Congress to have separately referenced a sub-category of persons 'seeking admission' in the specific section that relates to mandatory detention." *Hyppolite*, 2025 WL 2829511, at *9 (emphasis in original). Adopting Respondents' position would thus require the Court to "elide[ ] or avoid[] section 1225(b)(2)(A)'s 'seeking admission' language . . ., treating it as mere surplusage of the 'applicant' requirement." *Id.* (listing cases holding same).

52. For similar reasons, "[t]he government's position is [also] 'at odds with one of the most basic interpretative canons, that a statute should be construed so that effect is given to all its

provisions, so that no part will be inoperative or superfluous.'" *Sarmiento Guerrero v. Noem*, No. 25 Civ. 5881 (EK), 2025 WL 3214787, at *4 (E.D.N.Y. Nov. 18, 2025) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)). On Respondents' reading, the term "alien seeking admission" is surplus language that merely restates the term "applicant for admission," which appears several words earlier in the statute. That reading cannot stand, particularly since the canon against surplusage is at its "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

53. In addition to introducing surplus language into § 1225(b)(2)(A) itself, Respondents' reading renders superfluous a significant portion of Congress' immigration detention scheme: mandatory detention at 8 U.S.C. § 1226(c). There, Congress created a carve-out from § 1226(a) discretionary detention for noncitizens who are "inadmissible by reason of" certain outcomes in criminal proceedings, instead subjecting them to mandatory detention without a bond hearing. "[T]his mandatory detention under § 1226(c) would be unnecessary if[, as Respondents argue,] all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan v. Crawford*, No. 25 Civ. 1408, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025); *see also Hyppolite*, 2025 WL 2829511, at *9 (noting that Respondents' reading would render "'pointless'" Congress' recent expansion of the class of noncitizens subject to § 1226(c) mandatory detention, *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(E)(1)) (citation omitted)).

54. **Historical distinction.** The government's new interpretation finally eviscerates the distinction "our immigration laws have long made . . . between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May May v. Barber*, 357 U.S. 185, 187 (1958); *see also Zadyvas*

v. Davis, 533 U.S. 678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In *Jennings*, the Supreme Court reaffirmed that this longstanding distinction remains holds for the detention scheme enacted §§ 1225 and 1226, holding that the former concerns "aliens seeking admission into the country" and the latter "aliens already in the country." 583 U.S. at 289; *see also Sarmiento Guerrero*, 2025 WL 3214787, at *5; *Padilla Molina*, 2025 WL 3718728, at *4.

55. **Administrative record.** As a matter of administrative law, Respondents' unlawful interpretation of § 1225(b)(2)(A) is also a post hoc position contradicted by the agency record and therefore invalid. *See, e.g.*, *Goorakani v. Lyons*, No. 25 Civ. 9456, 2025 WL 3632896, at *11 (S.D.N.Y. Dec. 15, 2025) ("Respondents' previously consistent treatment of Petitioners as subject to discretionary detention under [§ 1226(a)] is fatal to their position in these cases.") (citing *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22, 22 (2020) and *Biden v. Texas*, 597 U.S. 785, 808 (2022)). CBP and ICE consistently classified Mr. Tacuri Yumbla as subject to detention under § 1226(a) and provided him documentation consistent with that classification. *See* Ex. C. It was only after re-detaining Mr. Tacuri Yumbla that immigration authorities first stated that his detention was governed by § 1225(b)(2)(A).

56. ***Bautista* classwide relief.** Finally, Respondents' arguments have been rejected in *Bautista v. Santacruz*, a class action in which the district court granted nationwide declaratory relief to a class of "noncitizens who already arrived in the United States without inspection, or will enter the United States and not face inspection[,]" and who are "subject to mandatory detention due to Respondents' improper interpretation of the INA." No. 25 5:25 Civ. 1873 (SSS), 2025 WL 3713987, at *25 (C.D. Cal. Dec. 18, 2025), *amending* 2025 WL 3288403, (C.D. Cal. Nov. 25, 2025). The court declared that class members are detained under § 1226(a) and vacated the DHS

policy subjecting them to mandatory detention under § 1225(b)(2)(A). 2025 WL 3713987, at *32. On information and belief, Mr. Tacuri Yumbla is a member of this class. Therefore, "the final judgment in [*Bautista*] . . . would presumably have preclusive effect in this litigation." *Ulloa Montoya*, 2025 WL 3718694, at *4.

57. When Mr. Tacuri Yumbla was arrested by ICE at Pennsylvania Station in New York City on Christmas Eve 2025, he was a noncitizen "already in the country," and accordingly he "may only be subject to detention as a matter of discretion under 8 U.S.C. § 1226(a)." *See J.U.*, 2025 WL 2772765, at *8 (finding that petitioner "effected entry into the United States in the past year since his release" near the border, in holding that petitioner may only be subject to discretionary detention under § 1226(a)).

58. A half-year after its formulation, "hundreds of district court decisions . . . have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA." *Padilla Molina*, 2025 WL 3718728, at *3; *see also Rodriguez-Acurio*, 2025 WL 3314420, at *23 (noting that, in 350 of 362 cases surveyed, district courts rejected Respondents' argument) (citing *Barco Mercado*, 2025 WL 3295903, at *4). As has the one Court of Appeals to have opined on the issue. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F. 4th 1048, 1060-62 (7th Cir. 2025) (finding that the government defendants were not likely to prevail on this issue because "ICE's authority to detain a noncitizen discovered within the country derives from § 1226(a) and not from § 1225(b)[,]" and "Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction.").

59. The Court should reject Respondents' erroneous reinterpretation §§ 1225(b)(2)(A) and 1226(a) and their massive expansion of authority to subject noncitizens like Petitioner to mandatory detention.

B. Respondents violated Mr. Tacuri Yumbla's right to procedural due process.

60. Mr. Tacuri Yumbla is being detained in violation of right to procedural due process.

61. The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. 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. at 693 (citations omitted).

62. In the Second Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 255 (1976), is used to evaluate due process challenges to immigration detention. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) These factors are: (i) "the private interest that will be affected by the official action"; (ii) "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 (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

63. With respect to the first factor, Mr. Tacuri Yumbla invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Id*; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2024) (describing "[t]he interest in being free from physical detention" as "the most elemental of liberty interests."). The first factor therefore weighs heavily in his favor.

64. With respect to the second factor, the "procedures used" during and after ICE took Mr. Tacuri Yumbla into custody entail an exceptionally high risk of erroneous deprivation. *See, e.g.*, *Valdez v. Joyce*, 803 F. Supp. 213, 218 (S.D.N.Y. 2025) (noting the "high" risk "of erroneous deprivation in the context of re-detention absent a change in circumstances, procedure, or evidentiary findings.").

65. ICE took Mr. Tacuri Yumbla into detention (1) without conducting the individualized assessment required by 8 U.S.C. § 1226(a) and its implementing regulations and (2) in the absence of a warrant of arrest or of any circumstances permitting a warrantless arrest under 8 U.S.C. § 1357(a)(2). *See, e.g.*, *Lopez Benitez*, F. Supp. 3d at 495 ("The purpose of requiring an exercise of discretion [under § 1226(a)] prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty."). His detention was, and remains, essentially devoid of process.

66. At the time it arrested him, ICE also failed to provide Mr. Yacuri Tumbla with notice that he was subject to mandatory detention. Mr. Tacuri Yumbla had been released at the border under § 1226(a) authority and Respondents have never informed him that they believe he violated a condition of his release (which he has not), and did not inform him at the time of his detention that the statute governing it had purportedly changed. *See, e.g.*, *Minarcaja Concha*, 2026 WL 215417, at *17 ("Significantly, [Petitioner] was not served with *any* document that even accused him of violating any conditions of his ROR, much less one that was prepared before ICE arrested and detained him.") (finding high likelihood of erroneous deprivation and ordering release); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 364 (S.D.N.Y. 2019) (ordering release of immigration detainee where he "was completely deprived of written notice"); *Mullane v. Cent. Hanover Bank*

& Trust Co., 339 U.S. 306, 314 (1950) ("The notice must be of such nature as reasonably to convey the required information.") (citation omitted).

67. Given this lack of procedure, ICE has necessarily failed to determine prior to his arrest that Mr. Tacuri Yumbla's detention is warranted based on a material change in circumstances since the time it released him on his recognizance. *See, e.g.*, *Padilla Molina*, 2025 WL 3718728, at *5; *O.F.B.*, 2025 WL 3277677, at *6; *Hyppolite*, 2025 WL 2829511, at *13. Indeed, even if it had conducted an individualized assessment, ICE would have no basis to determine based on the based on the record before it and the facts in the case that Mr. Tacuri Yumbla presents a danger to the community or a flight risk.

68. Because Respondents assert that Mr. Tacuri Yumbla is subject to unreviewable mandatory detention, he has had *no* opportunity to be heard since ICE took him into custody. The absence of any neutral review of his detention means that, but for recourse to this Court, he has no meaningful way to contest the propriety of his unlawful detention. *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *13 (discussing the elevated risk of erroneous deprivation that exists when noncitizens are subject to mandatory detention without a bond hearing) (citing *Black v. Decker*, 103 F.4th 133, 152-53 (2d Cir. 2024)).

69. The second *Mathews* factor therefore also weighs heavily in Mr. Tacuri Yumbla's favor.

70. As to the third *Mathews* factor, the preceding considerations heavily outweigh any interest Respondents have in subjecting Mr. Tacuri Yumbla to continued detention, or the burden of any substitute procedures. "The government's interest in detaining people on a discretionary, case by case basis under § 1226(a) includes 'ensuring the appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Hyppolite*, 2025 WL

2829511, at *14 (quoting *Valdez*, 803 F. Supp. 3d at 218)). Those interests have been adequately served by the § 1226's review procedures.

71. In addition, in this case there are no "fiscal and administrative burdens that the additional or substitute procedural requirements would entail," because the bond hearing has already taken place. *See Hyppolite*, 2025 WL 2829511, at *13 (holding that the burden of continued deprivation still easily outweighed any countervailing fiscal or administrative burdens where the bond hearing had not yet been conducted). "By contrast, the fiscal and administrative burdens of keeping [Mr. Tacuri Yumbla]—who [was found to not be a] flight risk nor a danger to the community — detained are extremely high." *Id.* (detailing brutal conditions of confinement at MDC).

72. Thus, all three *Mathew* factors weigh heavily in favor of finding that Mr. Tacuri Yumbla's detention violates his right to procedural due process.

C. Mr. Tacuri Yumbla's arrest without a warrant violates the INA and the Fourth Amendment.

73. Immigration officers must generally have an administrative warrant of arrest to take a noncitizen into civil immigration custody. *See Arizona v. United States*, 567 U.S. 387, 407-08 (2012). Pursuant to § 1226(a), "[f]or example, the Attorney General can exercise discretion to issue a warrant for [a noncitizen's] arrest and detention 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.*; *see also Chogllo Chafla v. Scott*, No. 2:25 Civ. 437 (SDN), 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025) (ordering release to remedy warrantless arrest and noting that "absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)") (emphasis in original), *appeal filed* Nov. 6, 2025; *accord Ahmed M. v. Bondi*, No. 25 Civ. 4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026); *J.A.C.P. v. Wofford*, No. 1:25 Civ. 1354 (KES), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025); *Florida v. United States*,

660 F. Supp. 3d 1239, 1276 (N.D. Fla. 2023), *appeal dismissed*, 2023 WL 5212561 (11th Cir. July 11, 2023). "If no federal warrant has been issued, [immigration] officers have more limited authority." *Arizona*, 567 U.S. at 408 (citing 8 U.S.C. § 1357(a)).

74. The INA contains a two prong-tested requirement that officers must meet before conducting a warrantless immigration arrest in the interior of the country. 8 U.S.C. § 1357(a)(2). Such an arrest is authorized only if the officer "has reason to believe" that two conditions are met: (1) "the [noncitizen] so arrested is in the United States in violation of any such law or regulation [related to the admission, exclusion, expulsion or removal of noncitizens];" and (2) the noncitizen "is likely to escape before a warrant can be obtained for his arrest." *Id.*; *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii) ("[A]n arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States," and "that the person is likely to escape before a warrant can be obtained.").

75. In addition to these statutory requirements, the Fourth Amendment also protects noncitizens from unreasonable search and seizure. *See, e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

76. "[T]o avoid running afoul of the Fourth Amendment," the phrase "reason to believe" as used in § 1357(a)(2) is "'considered the equivalent of probable cause.'" *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. 25 Civ. 3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (quoting *Au Yi Lau v. USCIS*, 445 F.2d 217, 222-23 (D.C. Cir. 1971) (additional citations omitted); *see also Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (collecting cases); *Baker v. McCollan*, 443 U.S. 137, 142 (1979) ("[T]he Fourth Amendment

requires . . . a fair a reliable determination of probable cause as a condition for any significant pretrial restraint of liberty.") (citation omitted).

77. As to the second prong of § 1357(a)(2), the requirement for probable cause of flight risk "is not mere verbiage." *Ramirez Ovando v. Noem*, No. 25 Civ. 3293467, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025) (quoting *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016), and citing *Arizona*, 567 U.S. at 394). Rather, it requires "ICE officers [to] make a 'particularized inquiry' that the subject is likely to abscond." *Id.* (quoting *Moreno*, 213 F. Supp. 3d at 1007-08); *see also id.* at *11 (rejecting post hoc warrants as a cure to a violation of § 1357(a)(2)) (citing *Castañon-Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 904 (N.D. Ill. 2020)); *Maryland v. Pringle*, 540 U.S. 366, 372 (2003) ("We have stated . . . that the substance of all the definitions of probable cause is a reasonable ground for belief of guilt and that the belief of guilt must be particularized with respect to the person to be searched or seized.") (cleaned up).

78. The Notice to Appear issued to noncitizens in order to initiate removal proceedings against them "does not authorize arrest." *Arizona v. United States*, 567 U.S. 387, 407 (2012). Rather, "it gives the [noncitizen] information about the proceedings, including the time and date of the removal hearing." *Id.* (citing 8 U.S.C. § 1229a(1)). DHS regulations instead require immigration officers to arrest a noncitizen in removal proceedings and take them into custody under a duly-issued "Form I-200 Warrant of Arrest." 8 C.F.R. §§ 236.1(b)(1); 1236.1.

79. ICE's arrest of Mr. Tacuri Yumbla without a warrant violates the INA and the Fourth Amendment.

D. Immediate release is the proper remedy for Respondents' lawless detention of Mr. Tacuri Yumbla.

80. Immediate release is the appropriate remedy for Respondents' unlawful detention of Mr. Tacuri Yumbla. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and

2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.") (citation omitted).

81. No procedural alternative to release can serve as an effective remedy. *See, e.g.*, *Rodriguez-Acurio*, 2025 WL 3314420, at *31 (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out."); *Tumba*, 2025 WL 3079014, at *8-9 (ordering release); *Hyppolite*, 2025 WL 2829511, at *16 (same). Mr. Tacuri Yumbla's detention was unlawful from the moment he was detained and then taken into custody. Respondents afforded him *no* process before detention and have baselessly asserted authority to subject him to mandatory detention. Their violation is particularly egregious given that they previously released him on a finding that he presented neither a danger nor a flight risk. Immediate release is the appropriate remedy.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. §§ 1225(b)(2)(A) and 1226(a)

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

83. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the interior of the United States.

84. Petitioner is detained under § 1226(a), as reflected by DHS's own documents, binding law, and longstanding historical practice. Yet DHS contends, following BIA caselaw, that Petitioner is subject to mandatory detention under § 1225(b)(2).

85. Section 1226(a) requires an individualized, pre-deprivation determination that a noncitizen whom Respondents intend to detain presents a danger or a flight risk.

86. ICE did not conduct an individualized determination of the propriety of Mr. Tacuri Yumbla's detention before it detained him. There has been no material change in circumstances since ICE released Mr. Tacuri Yumbla from custody at the border pursuant to its discretionary authority under § 1226(a). Mr. Tacuri Yumbla has complied with all the requirements imposed on him when he was released on recognizance.

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

SECOND CAUES OF ACTION
VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

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

89. 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 [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

90. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (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. at 335.

91. Here, all three factors weigh in favor a finding that Respondents have violated Mr. Tacuri Yumbla's right to procedural due process by asserting unlawful authority to subject him to mandatory detention, by affording him no process when they detained, and by providing him no way to meaningfully contest his unlawful detention.

THIRD CAUSE OF ACTION
WARRANTLESS ARREST IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
***8 U.S.C* § 1357(a)(2)**

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

93. Immigration officers are authorized to arrest noncitizens pursuant to an administrative warrant of arrest.

94. Absent a warrant, the INA permits a warrantless arrest only upon a showing of a reason to believe that a noncitizen is "is in the United States in violation of any such law or regulation [related to the admission, exclusion, expulsion or removal of noncitizens]" and (2) "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Reason to believe is the equivalent of probable cause.

95. Respondents did not satisfy both prongs of this test. Respondents at a minimum did not have reason to believe that Mr. Tacuri Yumbla was likely to escape before a warrant could be obtained for his arrest. Mr. Tacuri Yumbla had a stable job, attended all of his required appearances before immigration agencies, and was pursuing lawful immigration relief.

96. Therefore, Mr. Tacuri Yumbla's arrest and detention without a warrant violate the INA.

FOURTH CAUSE OF ACTION
UNREASONABLE SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT
U.S. Const. amend. IV.

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

98. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized." U.S. Const. amend. IV.

99. A warrantless immigration arrest conducted without probable cause violates the Fourth Amendment's prohibition on unreasonable searches and seizures. *See, e.g., A.B.D. v. Wamsley*, No. 6:25 Civ. 2014 (AA), 2026 WL 178306, at *12-13 (D. Or. Jan. 22, 2026).

100. Because Respondents arrested Mr. Tacuri Yumbla without a warrant and a showing of probable cause, his detention violates the Fourth Amendment.

FIFTH CAUSE OF ACTION
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)

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

102. The Administrative Procedure Act permits a reviewing court, as relevant here, to "hold unlawful and set aside agency, findings, and conclusions found to be—(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority,

or limitations, or short of statutory right; [or] (D) without observance of procedure required by law[.]".

103. Agency action is arbitrary and capricious or an abuse of discretion where 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." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

104. Mr. Tacuri Yumbla's detention is final agency action reviewable under the APA because it marks the consummation of DHS's decisionmaking process and determines his rights under law.

105. Mr. Tacuri Yumbla's detention violates the APA in at least five ways:

a. Respondents' assertion of authority to subject Mr. Tacuri Yumbla to mandatory detention under § 1225(b)(2)(A) is in excess of statutory authority or limitations, and is ultra vires;

b. Respondents' detention of Mr. Tacuri Yumbla in violation of his Fifth Amendment procedural due process rights is contrary to constitutional right;

c. Respondents' detention of Mr. Tacuri Yumbla without the individualized determination as to danger and flight risk required by 8 U.S.C. § 1226(a) is an abuse of discretion and without observance of procedure required by law;

d. Respondents' detention of Mr. Tacuri Yumbla without a showing of any changed circumstances since he was released on recognizance is arbitrary and capricious and an abuse of discretion.

e. Respondents' arrest of Petitioner without a warrant or probable cause as required by 8 U.S.C. § 1357(a)(2) and the Fourth Amendment is in excess of statutory authority or limitations and contrary to constitutional right;

106. Respondents' detention of Mr. Tacuri Yumbla therefore violates the APA.

SIXTH CAUSE OF ACTION
VIOLATION OF THE *ACCARDI* DOCTRINE

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

108. The *Accardi* doctrine holds that government agencies are bound to follow their own rules and internal procedures that regulate the rights and interests of others. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Montilla v. INS*, 926 F. 2d 162, 166-67 (2d Cir. 1991).

109. Respondents have violated several binding regulations in detaining Mr. Tacuri Yumbla: 8 C.F.R. §§ 236.1(b)(1) and 1236.1(c)(8) (requiring issuance of warrant of arrest individualized determination as to danger and flight risk); 8 C.F.R. § 287(c)(2)(ii) (requiring individualized assessment as to flight risk before warrantless arrest).

110. Respondents' detention of Mr. Tacuri Yumbla therefore violates the *Accardi* doctrine.

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

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[3] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO*, 965 F.2d at 1237("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 Civ. 1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9. *See also* Order, *Ozturk v. Hyde*, No. 25 Civ. 374 at 68 (WKS) (D.Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

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Respectfully submitted,

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